To <stalking_consultation@cmab.gov.hk>
cc
bcc
26/03/2012 11:30 Subject Letter of Objection to anti-stalking legislation
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

The International Federation of Journalists Asia Pacific objects to the introduction of a new anti-stalking law as suggested by the Constitutional and Mainland Affairs Bureau.

Please find attached our letter of objection.

Best regards,

Katie Richmond

Projects Director
IFJ Asia-Pacific
International Federation of Journalists
Tel:
Fax: (deleted)
Skype: (deleted)

Letter of Objection.doc

International
Federation
of Journalists

JACQUELINE PARK
IFJ Asia-Pacific Director
ELISABETH COSTA
General Secretary

I am _____(pls fill in your name and occupation or any information that identify yourself). I write to object the introduction of a new anti-stalking law as suggested by the Constitutional and Mainland Affairs Bureau. The new law proposed has profound adversary impacts on freedom of expression and other freedoms currently enjoyed by Hong Kong people

If the government really wants to protect all those suffered by stalking denoted in the consultation paper, the government may amend current legislations respectively, namely, *Domestic and Cohabitation Relationships Violence Ordinance*, *Money Lenders Ordinance* and *The Landlord and Tenant (Consolidation) Ordinance.*

To stalking_consultation@cmab.gov.hk
cc
bcc
26/03/2012 19:01 Subject 纏擾行為的公眾諮詢意見

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其實香港有很多人都受到噪音滋擾, 小市民們住在小小的蝸居, 放工回家只想休息, 但一些無良無恥的人, 每天由早上至深夜都不斷製造噪音使人心情煩躁, 難以入睡以至精神不振及身心疲累!!

我們曾向有關部門或管理公司投訴, 他們只回覆會勸告製造噪音者, 但情況沒有改善, 有關部間亦會將事情不了了之。 他們沒有切實執行有關的扣分制度。

現在香港人生活壓力大，還要承受這些噪音滋擾。每星期的新聞報刊都有一些關於噪音滋擾令受害人心情變得暴躁亦而有衝突或打架的情況出現。

希望政府今次的纏擾行為咨詢亦能夠正視有關的噪音滋擾問題，令受害的市民不再被纏擾。

“騷擾（harass）：1.重複受打擾而煩惱。現在的慣義 是經常受到煩擾或折磨。2.破壞、創傷。3.怠倦、身心透支。.....”
“煩擾(動詞)（molest）：1.帶來煩惱； 惹怒、惱亂、造成不便。b.關於疾病： 受感染， 受侵襲。2.惡意或存 心傷害別人地干擾或干涉（某人）。

(寄件人要求不具名公開意見)

26/03/2012 20:58

To "stalking_consultation@cmab.gov.hk" <stalking_consultation@cmab.gov.hk>

cc

bcc

Subject Submission in Response to the Consultation Paper on Stalking

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

Dear Sir / Madam,

I am writing to express my views on the Consultation Paper on Stalking issued in December 2011.
The Submission is hereby attached.
Thank you for your kind attention.

Best regards,

WONG Cho Lik (Mr.) Submission in Response to the Consultation Paper on Stalking.pdf

Submission to the Constitutional and Mainland Affairs Bureau in Response to the Consultation Paper on

STALKING

1. I am writing to express my humble opinion on the Consultation Paper on Stalking issued in December 2011. This Submission will critically review the proposed offence of harassment through a criminal law perspective, under which the key ingredients of the recommendation will be carefully assessed against the mischief that is intended to be resolved. Experience in overseas jurisdictions will be cited.

Course of conduct

2. For the avoidance of doubt, it is submitted that the proposed law should expressly stipulate that the term "course of conduct" involves conduct on *at least* two occasions without restricting the time frame within which the conduct must occur. Whilst it injects not much novelty, spelling out the implicit would assist laypersons especially the victims and potential stalkers in better grasping the overwhelming feature, *i.e.* persistence, of this broadly drafted new offence.

3. The concern that the aforesaid minimum threshold would be too harsh in a crowded city like Hong Kong[1] is unsupported. The expression should be understood as drawing the bottom line rather than setting an absolute condition.[2] In the United Kingdom, from which the terminology "course of conduct" is imported[3], the judiciary has repeatedly emphasised that the notion entails much more than a straightforward mathematical exercise. The leading principle is that the fewer and less repetitious the incidents, the more serious each has to be for the inference of harassment.[4] The judge would have to exercise his logic in assessing the nexus between the composite events.[5]

Definition of harassment

4. There are three mainstream approaches in defining the range of conducts being proscribed under anti-stalking laws. The broadest formulation, as England and Wales[6] have adopted, is to refer stalking as a course of conduct that constitutes

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1 *Report on Stalking* (2000), para.6.22.
2 Infield and Platford (2000), p.10.
3 *See* Protection from Harassment Act 1997, section 7(3).
4 *See*, for example, *DPP v Lau* (2001) *per* Schiemann LJ, *Pratt v DPP* (2001) and *Jones v DPP* (2010) *per* Ouseley J.
5 Ormerod (2000), pp.581–582.
6 Protection from Harassment Act 1997.

harassment, without detailing the prohibited behaviours. The Consultation Paper favours the same format. With much attention of the prosecution diverted to inter-neighbour and minor domestic disputes other than stalking itself, the breadth of the English Act has been regarded as its weakness though.[7]

5. The other way round is to specify exactly what types of acts would attract criminal liability, as reflected in the legislation of Canada[8], most Australian states[9] and New Zealand[10]. While numerous scientific investigations have attempted to portray the main characteristics of stalking[11], distilling their findings into a feasible definition in criminal law is uneasy.[12] It should be noted that stalking encompasses a spectrum of heterogeneous and highly individualised intruding behaviours[13], sharing perhaps only one single commonality, *i.e.* the conduct is repeated.[14] Stalking is simultaneously a pattern of conformity and criminality; conduct with a perfectly legal beginning can turn into harassment a particular point in time on the basis of undue persistence.[15] Technological advancement has opened up more options to stalkers, rendering a finite description even harder to catch up with the reality.[16]

6. The best alternative appears to be a hybrid of the two, whereby the statute offers a non-exhaustive outline of stalking tactics, as the enactment in Scotland[17] does. A recent Parliamentary inquiry has even urged other parts of the country to learn from this prime example.[18] A typical non-comprehensive list forbids following, repeated telephone or written contact, monitoring or surveillance, loitering, interfering with properties and publishing offensive materials.[19] This method balances well the need to plug loopholes and the wants for certainty. Both the law enforcement agencies and the prosecution can more readily ascertain the spirit behind the law. Thus it is submitted that the anti-stalking legislation in Hong Kong, if pursued, should follow this third model.

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7 Harris (2000), p.vi.

8 Criminal Code of Canada, section 264(2). *See* also *A Handbook for Police and Crown Prosecutors on Criminal Harassment* (2004), pp.31–32.

9 For example, South Australia, Victoria and Queensland. *See* Kift (1999) for a review of the offence of unlawful stalking under the Queensland Criminal Code.

10 Harassment Act 1997.

11 *See*, for example, Meloy and Gothard (1995), Pathé and Mullen (1997) and Sheridan, Davies and Boon (2001). *See* also Petherick (2009), pp.258–261, for an overview of the relevant literature.

12 Finch (2002), p.704.

13 Budd and Mattinson (2000), chap.5.

14 Petch (2002), p.20.

15 Ogilvie (2000). *See* also the English case *DPP v Hardy* (2008).

16 *See* the discussion in Geach and Haralambous (2009).

17 Criminal Justice & Licensing (Scotland) Act 2010, section 39. After listing out nine banned conducts, section 39(6)(j) explicitly states that stalking includes "acting in any other way that a reasonable person would expect would cause [another] to suffer fear or alarm".

18 Richards, Fletcher and Jewell (2012), pp.21–24.

19 Blaauw, Sheridan and Winkel (2002), pp.143–144.

Alarm or distress

7. The proposed stalking offence features the incitement of adverse consequences in the victim. Empirical studies have demonstrated that the opinion of a lay person as to what amounts to stalking may not conform neatly to the criteria in law.[20] More precisely, women seemed to have interpreted unsolicited attention from the opposite sex more seriously, while male victims were more inclined to feel annoy or upset.[21] In designing the new offence, the legislature must, on the one hand, flesh out the psychological pointers against which the victim should compare their own emotion, and on the other hand, cater for the variation in response to victimization across gender.

8. On whether the reaction of the victim should be taken into consideration, there are three legislative approaches around the globe. First, the English Act applies a wholly subjective test.[22] Second, the Canadian provision uses a subjective and/or objective assessment, requiring both that the victim must actually fear for their safety and that a reasonable victim would experience the same.[23] Third, the majority of Australian and New Zealand laws are vague on this issue.[24] Although the foremost measure would to a certain extent place criminal liability contingent upon the vulnerabilities of the victim, it best serves the legislative motive. It would be undesirable to substitute the actual reaction of the victim with what the judge, as a bystander, imagines.

9. In consistent with the recommendation of the Law Reform Commission, it is submitted that trivial incidents that does not cause alarm or distress should fall short of harassment.[25] In the absence of a universal criterion on how to measure or differentiate alarm and distress, it is also agreed that the two parameters should be viewed *disjunctively* but not conjunctively.[26]

10. With respect, apprehending the idea of alarm and distress may not be as simple as the Consultation Paper suggests. Otherwise the English court would not have handled a substantial number of cases on how the line between legitimate pursuit and harassment ought to be drawn. The House of Lords enunciated that courts are to recognise the boundary between conduct which is unattractive, even irritating and annoying, and conduct which is oppressive, unacceptable and should sustain criminal liability.[27]

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[20] Dennison and Thomson (2005), pp.392–398.
[21] *Op. cit.* note 13, chap.6.
[22] Protection from Harassment Act 1997, section 7(2).
[23] Criminal Code of Canada, section 264(1).
[24] Purcell, Pathé and Mullen (2004), p.164.
[25] *Op. cit.* note 1, paras.6.30–6.40.
[26] *See* the English decision *DPP v Ramsdale* (2001).
[27] *Majrowski v Guy's and St Thomas's NHS Trust* (2006) *per* Lord Nicholls. See also *R v Curtis (James Daniel)* (2010).

11. Especially when the *subjective* perception of the victim, *i.e.* alarm or distress, is going to represent a decisive element of the proposed offence, it is preferable to give guidance inside the legislation as to how the phrases should be interpreted. It is acknowledged that brainstorming a definite and concise checklist would almost be impossible. A workable way is to make reference to decided cases, in particular English cases because the proposed legislation corresponds to their Act, and try to highlight and explain the intended meaning of alarm and distress.

Intent

12. Establishing *mens rea* could be tricky in stalking cases because many offenders wish to show love and affection towards their objects, and not to deliberately hurt or frighten them.[28] Prosecutors in South Australia once argued that the intent requirement in their legislation would be virtually impossible to prove.[29]

13. The waiver of specific intent to cause harm to another in the English harassment law is applauded as to have filled up the inadequacies of existing offences.[30] But the outcome could be harsh. The hypothetical reasonable person, who acquires the same information as the accused does, would not possess the obsessive habits or mental illness of the latter.[31] It has been pointed out that early intervention could lead the mentally disordered to suitable treatment.[32]

14. Eliminating the intent requirement has aroused much debate. Contrasting with strict liability offences, which are usually plainly illegal, sceptics worried that innocent and legitimate behaviour would be misconstrued as stalking.[33] The English framework was described as having three easily satisfied requirements, namely the wide ambit of harassment, subjective effect to the victim and objective mental element coupled together.[34] Yet one must not lose sight of the underlying objective of anti-stalking legislation, being to strengthen protection to domestic violence victims from behaviours impairing their life.[35] It is hence submitted that the Government should, in constructing the *mens rea* for the proposed offence, employ the purely *objective* reasonable person standard —— a concept that both the court and advocates are fairly familiar with. In any event, the defendant is at liberty to raise any valid defence. If deemed appropriate, the degree of culpability can be projected through a two-tier penalty scheme, under which intentional offenders are subject to more severe punishment.

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[28] McEwan, Mullen and MacKezie (2007), p.209.
[29] Goode (1995), p.29.
[30] Addison and Lawson-Cruttenden (1998), p.36.
[31] *R v Colohan* (2001) *per* Hughes J.
[32] Ormerod (2011), p.701.
[33] *Op. cit.* note 20, p.388.
[34] *Op. cit.* note 12, p.710.
[35] Allen (1996).

Collective harassment

15. Despite the reservation of the Law Reform Commission[36], it is submitted that the proposed statutory provisions are capable of curbing abusive debt collection practices. The English Court of Appeal opined that criminal proceedings can be brought as against an erroneous debt recovery action, in which the impugned course of conduct had been persistent, threatening and intolerable.[37]

16. Quite often moneylenders in Hong Kong engage agents in debt recovery and debt collectors act as a group. It is submitted that an equivalent of the English provision[38] could effectively support the prosecution in ascertaining secondary liability in applicable cases. It appears that control of collective harassment would have minimal impact on improving domestic violence. However there is no convincing reason why the Government should be bound to make law in a piecemeal manner, when the proposed legislation at hand, with slight addition, can obviously scrutinize yet another oppressive conduct in running a business.

Harassment to deter lawful activities

17. Again unique to England and Wales, the offence to criminalise a single harasser on multiple victims[39] proves valuable in shielding corporate personnel from disturbance of radical protestors.[40] Unlike interpersonal stalking, perpetrators in these instances are motivated to intimidate an individual due to his status as an employee of a certain organisation, and to interrupt as many targets as he can.[41] It is submitted that these distinguishing attributes should warrant a tailored provision, directing at the identified problem, in the proposed law.

18. Prior to the inception of the new provision, the English court had held that the original harassment law did not cover a company or its employees, unless the employees being affected were "members of a close knit, definable group".[42] To preserve freedom of expression and assembly, the provision narrows down its scope by inserting an additional intention requirement, being to persuade someone else to refrain from something they are entitled to do.

WONG Cho Lik (Mr.)
Dated this 26th day of March 2012

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[36] *Report on the Regulation of Debt Collection Practices* (2002), para.10.16.
[37] *Ferguson v British Gas Trading Ltd* (2009) *per* Jacob and Sedley LJJ. *See* also *S&D Property Investments Ltd v Nisbet* (2009).
[38] Protection from Harassment Act 1997, section 7(3A).
[39] Protection from Harassment Act 1997, section 1(1A).
[40] *See* the judicial comment in *SmithKline Beecham plc v Avery* (2009) at [40]–[42] *per* Jack J.
[41] Seymour (2005), pp.63–64.
[42] *DPP v Dziurzynski* (2002). *See* also *DPP v Dunn* (2001).

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To <stalking_consultation@cmab.gov.hk>
cc
bcc
26/03/2012 21:09 Subject stalking consultation paper
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

My view:
Chapter 5:
2 (a) (i) (ii) (iii): stalking should be made a criminal offence.
2 (b): but not for people exercising civil rights, expressing opinions, objections, holding rallies for these purposes, in a collective way in relation to
government actions, and public policy.
3 (a): its too rigid to fix one single penalty for all cases.
(b): agreed.
(c): but subject to the views as stated in 2 (b) above.
4 (a): agreed.
(b): a seperate and specific defence for news-gathering activities should be provided.
(c): for the public's information and interest, their rights to know.
(d): same as (c) above.
(e): same as (c) above.
5 (a): agreed.
(b): agreed.
6 (a): agreed.
(b): agreed.
7 (a): agreed.
(b): agreed.

from: chan ho kai
date: 26 March 2012

To stalking_consultation@cmab.gov.hk
cc
bcc
26/03/2012 21:19 Subject 反對政制及內地 事務局擬議另立新例禁制纏擾行為

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

我羅照輝(身分證號碼 (刪除) 是一名中學教師，現具函反對政制及內地 事務局擬議另立新例禁制纏擾行為，因為有關新例誓將影響新聞自由和市民請願遊行等表達自由。

本人認為，政府可考慮在《家庭及同居關係暴力條例》、《放債人條例》及《業主與租客條例》中加入禁止纏擾行為的條款，以保障受 前歡舊愛纏擾的男女、無辜受收債行為影響和因強迫收樓而受逼迫的小市民。

羅照輝上 26/03/2012

To stalking_consultation@cmab.gov.hk
cc
bcc
26/03/2012 23:33 Subject Submission on Consultation Paper on Stalking
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

Dear Sir/Madam,

Enclose please find my opinion on the proposed Stalking Law.

Tsang Siu Man Carv
email:
phone: (deleted)

Submission_TsangSiuManCary.docx

Submission to the Constitutional and Mainland Affairs Bureau on:

Recommendations on *Offence of Harassment* in the Proposed Law on Stalking

From *Criminal Law* and *Constitutional Law* Perspectives

Introduction

This submission will, from criminal and constitutional laws perspectives,

1. Briefly assess the proposed offences;
2. Outline concerns about freedom of press;
3. Address constitutionality issues; and
4. Finally make concluding remarks.

The Offence

The proposed offences largely resemble sections 1[1] and 7(2)[2] of UK's Protection from Harassment Act 1997 ("PHA"), although two key distinctions as to the requirement on seriousness of harassment[3] and offences of "collective harassment" and "harassment to deter lawful activities" can be identified.

On its face, the Hong Kong proposal looks less harsh than PHA. Examining PHA's application, however, certain concerns can be identified, from which one can argue that the law, in both versions, can be draconian. For example, despite requiring "causing the victim alarm or distress", the Hong Kong proposal does not clearly

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[1] Section 1 reads:

> (1) A person must not pursue a course of conduct—
>
> (a) which amounts to harassment of another, and
>
> (b) which he knows or ought to know amounts to harassment of the other.
>
> (2) For the purposes of this section, the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

[2] Section 7(2) reads: " References to harassing a person include alarming the person or causing the person distress."

[3] The Hong Kong proposal requires harassment to be "serious enough to cause alarm or distress", while PHA merely "includes alarm or distress", i.e. harassment short of causing alarm or distress is still covered.

define such terms[4]. Absent clear definitions, and given these are questions of fact on victims' subjective mind[5], the defendant can be convicted if his course of conduct makes the victim feel "alarm or distress".

There arises formidable concerns for journalists, whose daily acts can easily amount to harassment under the proposed legislation. The below will demonstrate how journalists' flexibility in work, and more importantly freedom of expression, can be severely restricted[6].

Concerns on Freedom of Press

Over recent years it has been alleged that freedom of press in Hong Kong has been restricted, e.g. when PRC Vice-Premier Li Keqiang visited Hong Kong in summer 2011, the media made several allegations against the police obstructing their work through draconian ways like searching personal belongings, unreasonable press areas, footages of Li's activities only available from Government Press, and even violence and arrests; it is also suggested that self-censorship has become severe. In light of these, it is conceivable that the media concern about their rights and freedoms.

Indeed the proposed legislation can deter real harassments by media like in *Wong Yeung Ng*[7] case where paparazzi stalked Godfrey JA (as he then was) in order to "educate" him, but it also poses risks of clamping down freedom of press. The next part will delineate media's concerns and current situation in UK.

Concerns in Hong Kong

The concerns can be summarized under three headings:

1. *Currently acceptable acts can become illegal*

   A main duty of journalists is to pursue first-hand information from related parties. If questions remain unanswered, journalists will naturally press for answers by means from repeated calls and emails, waiting around interviewee's premises, to following them. In cases involving public interests or wrongdoings, persistent

[4] In Hong Kong, LRC and the Constitutional and Mainland Affairs Bureau stated that these terms "*could be easily understood by the courts and the ordinary public*" (Consultation Paper on Stalking, December 2011, paras 3.8 and 3.10)

[5] Consultation Paper on Stalking, December 2011, para 3.10; *King v DPP* (20 June 2000, unreported)

[6] Discussions in this submission cover all "harassment by stalking", "collective harassment", and "harassment to deter lawful activities".

[7] *Wong Yeung Ng v Secretary for Justice* [1999] 2 HKLRD 293 (HKCA)

efforts are put for satisfactory answers. Such acts, however, are not always welcomed by persons pursued, and the proposed offences can be a way out for them—most acts listed above fall within "course of conduct", and as long as the targeted individuals feel "alarm or distress" they can then call police and have journalists arrested (or at least get rid of). This does not only hinder press freedom and general public's right to know, but also enable wrongdoers to escape scrutiny.

2. *The defences does not afford protection to journalists at all*

   The government does not exempt the press from the offences[8], but explained that the "reasonable conduct" defence is sufficient—in this case defences available to journalists are only "reasonable conduct" and "did not know, nor ought to have known, that their acts amounted to harassment"; and once prosecuted, they must pause their actions before successfully defending themselves in court. By the time court proceedings finish, journalists have already missed the best timing for the news, thus the truth will well be left in dark. Again the public will be deprived of the truth.

3. *Political oppression and self-censorship*

   As abovementioned individuals can then conveniently conceal their wrongdoings from the press, and it is possible that powerful individuals manipulate the law to oppress journalists in political disagreement with them. Moreover, the criminal procedure does not only span long time, but also cost substantial legal fees—with risks of huge costs for news reporting, the undesirable trends of self-censorship and over-restrained press activities are foreseeable.

Situation in UK

Similar concerns arose in UK when PHA came into effect, and together with subsequent legal developments, these concerns actuated. Commentators have stated that PHA has become an effective tool to stop people from expressing themselves, particularly the press from publishing news about certain individuals; concern groups also indicated that PHA "is being transformed from an Act designed to prevent intimidation to a tool to intimidate the press[9]"

[8] In recent press conferences and consultation events, however, CMAB officials said that they are open to the exemption if public opinion supports including it.

[9] Page 12 of the report submitted to the 91st Session of the United Nations Human Rights Committee by Article 19 (a London-based press freedom concern group).

One famous example is *RWE NPower plc v Carrol*[10], where a nuclear power company, invoking PHA, barred photographers and reporters from recording the company bulldozing land and lakes for dumping power station wastes and reporting protests against the company. The injunction was granted despite clear public interest involved.

Going further, PHA was also used to stop the press from publicizing news—in *Thomas v News Group Newspapers Ltd*[11], the claimant successfully brought a harassment claim against a newspaper for publishing articles about her[12].

Moreover, after PHA, several legislations were amended, allowing police officers to make arrests upon reasonable suspicion of harassment[13].

As can be seen, if concerns about press freedom are not properly addressed before legislation, the proposed offences can powerfully hinder freedom of expression—journalists can easily be subjected to civil, and worse, criminal liabilities.

Constitutionality Concerns

Freedom of press is under freedom of expression. In Hong Kong, freedom of expression is protected by Article 27 of Basic Law and section 8[14] of Bill of Rights Ordinance (Cap. 383, "BORO"). Any laws restricting freedom of expression must survive the three-part proportionality test laid down in *Leung Kwok Hung v HKSAR*[15].

First Limb: Any legitimate aim?

The permissible legitimate aims are listed in BORO, including *ordre public* and protecting rights of others. The proposed legislation apparently aims to protect the right not to be harassed, which also falls within the wide definition of *ordre public*[16].

[10] [2007] EWHC 947 (QB)
[11] [2001] EWCA Civ 1233
[12] In that case a newspaper published articles reporting that three police officers had been demoted as a result of complaints made by the claimant about their alleged racist remarks
[13] One most famous section is Section 41 of Criminal Justice and Police Act 2001
[14] cf. Article 19 of ICCPR.
[15] (2005) 8 HKCFAR 229
[16] Siracusa and Kiss give the following definition: "wider than just law and order, and includes what is necessary for protection of general welfare or for interests of collectivity of society as a whole."

Second Limb: Rationally connected to that aim?

By common sense a best way to protect people from harassment is to prohibit harassment, and criminalization is a rational means for that.

Third Limb: No more than necessary to achieve that aim?

This question is more complicated. Since there is no constitutional review alike in Hong Kong, reference to foreign jurisdictions will be necessary.

In UK, direct constitutional review on PHA never arose as at now, but in *Huntingdon Life Sciences Ltd v Curtin*[17] Eady J emphasized that PHA can never be intended to "clamp down on the discussion of matters of public interest" nor to prosecute persons engaging in protests and press activities on matters of public interests.

US law also sheds light on constitutionality issues. Sections 240.26 and 240.30 of New York Penal Law[18] resemble the Hong Kong proposals, but were held unconstitutional in cases like *Vives v City of New York*[19], where the District Court held that "wordings of [those sections] were *overly broad* and created risk of inhibiting freedom of expression[20] (emphasis added)".

The proposed offences seem to be over-inclusive and going to far to achieve its aim: blanket criminalization without protecting actions concerning public interests (apart from the "reasonable conduct" defence) and falling short of "fair warning" (from which it is difficult to ascertain whether a certain course of conduct amounts to harassment) can distort the law into tools of oppressing freedom of expression.

Concluding Remarks

The 2000 LRC report on stalking stated that certain kinds of harassment can be dealt with by existing laws, or by supplementing existing laws. For instance, laws on privacy and wandering, as well as harassment-related offences in Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189), have already afforded

[17] (11 December 1997, unreported)

[18] Although it is a state penal law, provisions on harassment are largely the same in penal laws of other states. Like the Hong Kong proposal, both sections refer harassment to "course of conduct causing alarm, distress, or annoyance".

[19] 305 F. Supp. 2d 288 (2003) (District Court); 524 F. 3d 346 (2008) (Court of Appeals, 2nd Circuit)

[20] Although reversing the District Court judgment on other reasons, the 2nd Circuit of Court of Appeals affirmed the unconstitutionality point.

protection to large proportions of harassment victims. It is conceivable that the government endeavors to extend protection to persons left out, but the current proposal creates more problems than good, especially that freedoms of expression and press are at stake. Some people even fear that the legislation marks the prelude of Article 23's return.

To conclude, before concerns about constitutional rights (like freedom of press) are fully discussed and addressed, it is premature to proceed to the next stage: legislating a new law on harassment.

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A0%B4%E9%9D%A2%E6%88%96%E6%88%90%E6%B3%A1%E5%BD%B1,
retrieved on 18th March 2012

To stalking_consultation@cmab.gov.hk
cc
bcc
26/03/2012 23:57 Subject Submission
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

Dear Sir,

After close examination of the consultation paper, I am writing to endorse the proposal on 2 of the elements of the stalking offence.
Please find the detailed arguments in the attached file.

Regards,

Vivian Submission_stalking.doc

Submission on Consultation Paper on Stalking

With reference to the Consultation Paper issued in December 2011 on the proposed offence of stalking, the author wishes to comment on the recommendations regarding the elements of offence from a criminal law perspective. This submission seeks to comment on the required states of mind of (i) the offender and (ii) the victim, and compares that with the position of foreign jurisdictions. At the end of the discussion, the author would like to endorse the proposed construction of the offence.

States of Mind

It is proposed that a person shall be guilty of stalking if he "knows or ought to know" his act amounts to harassment. This presents the alternate form of subjective and objective mens rea. For the objective form, the standard of "a reasonable person in possession of the same information" would be adopted. Thus it is clear that subjective appreciation of the nature or consequence of the act is not essential, and the defendant may not be able to prove his honest belief as a defense. Next, the harassment shall be "serious enough to cause *that* person alarm or distress". Based on the wordings, it appears that the proposed offence requires the prosecution to prove the victim himself is alarm or distress, and the alarm or distress does not have to be reasonable. The Law Reform Commission (the "LRC") also explained the subjective nature of the test.[1]

In criminal law, it is well-established that an act does not make a man guilty unless his mind is also guilty, *actus non facit reum, nisi mens sit rea.*[2] Therefore, as a starting point, subjective mens rea shall always be proved. Good reasons shall always be provided to justify the departure from this fundamental principle to impose absolute liability. Failure to do so may subject the provision to future judicial challenges, for example, on the basis of arbitrary arrest[3]. The mental state of victim, however, shall receive different treatment. It is a component of acuts rea, and shall link to the goal of legislation especially the degree of protection intended. If the goal is mainly retributive, it is more appropriate to require the proof of actual harm. Before commenting on the recommendations, it is desirable to review similar provisions in foreign jurisdictions and analyze the relevant rationales.

Foreign Jurisdictions

[1] Consultation Paper on Stalking para 3.3.
[2] Laid down in *R v Tolson* and confirmed in *Hin Lin Yee v HKSAR.*
[3] See Basic Law Art 28 and Bill of Rights Art 5.

Australia

After Queensland introduced stalking offence into its Criminal Code, all other states and territories in Australia followed suit to criminalize similar activities under the same label of "stalking". The states disagree and assume different position as to the mens rea requirement. But the states are more united to waive the proof of actual harm suffered by victim.

Stalking is condemned under a purely objective standard in Queensland[4]. It is emphasized that "it is immaterial whether the person doing the unlawful stalking intended to cause the apprehension or fear, or the detriment"[5] and "whether the apprehension or fear, or the violence...actually caused[6]. In Western Australia, legislation is designed to condemn (i) intent to intimidate and (ii) acting in a manner that "could reasonably be expected to intimidate, and that does in fact intimidate" under separate subsections.[7] Some other states remain to demand the proof of some subjective elements. For example, New South Wales condemns stalking behavior only if a person "knows that the conduct is likely to cause fear in the other person"[8].

After implementation, there is a trend among states to amend their stalking law by replacing subjective mens rea with objective one. For example, Tasmania amended the law in 1999 to make objective intent suffice for conviction,[9] so as to protect public from defendant who claimed to act out of love[10]. An Australian commentary pointed out the difficulty inherent in the subjective mens rea requirement. It is explained that stalking usually represented attempts to "initiate or maintain a relationship" as opposed to cause fear, thus condemning only offenders with malice intent may jeopardize the purpose of stalking laws.[11]

Canada

Stalking is criminalized under the heading "criminal harassment" in Canadian Criminal Code[12]. The relevant mens rea is knowledge or recklessness about the effect of the acts. Courts followed *R v Sansregret* in criminal harassment cases to interpret

[4] Criminal Code Act 1899 s359B.
[5] *Ibid* s359C(4).
[6] *Ibid* s359C(5).
[7] Criminal Code Act Compilation Act 1913 s338E.
[8] Crimes (Domestic and Personal Violence) Act 2007 s13(3).
[9] Criminal Code Amendment (Stalking) Act 1999 (No 59 of 1999) s3.
[10] Legislative Council Hansard, 27 October 1999 at pp1-2.
[11] Ogilvie (2000) at p76.
[12] s264.

recklessness to demand proof of subjective awareness of a risk and acting unreasonably to take the risk.[13] It was alleged in *R v Krushel* that the provision unduly condemns the morally innocent who do not intent the harmful consequence. The court upheld *R v Sillipp* and rejected the allegation. In contrast to the stance of defendants in these cases, a commentary advised the amendment of the offence to make objective mens rea suffice, so as to extend the protection to public against stalkers with mental illness. Another commentary also expressed the difficulty in proving the subjective state of mind to secure conviction.[14]

As a second requirement, the prosecution has to prove that the harassment has caused the victim "reasonably, in all the circumstances" to fear for safety, i.e. the victim has to actually feel the fear and such fear has to be reasonable. Thus, both a subjective and objective standard is imposed. However, it is noted that such a requirement may subject the victim to undesirable cross-examination about his past relationships and personal history.[15] There is also real risk that court may wrongly rely on the stereotype of victim to conclude he overreacted.[16]

The United Kingdom (UK)

The proposed stalking offence in Hong Kong largely adopts and resembles the current UK position on prohibition of harassment[17], including the objective mens rea and the subjective state of mind required of victim. It shall be noted that the word "stalking" is not found in the legislation itself.

The objective mens rea is examined in *R v SPC*. The defendant in that case suffered schizophrenia and argued the reasonable person test shall be construed to incorporate his special conditions. The Court of Appeal opined that adopting the defendant's argument would "remove from [the Act's] protection a very large number of victims and indeed to run the risk of significantly thwarting the purpose of the Act". The Court re-confirmed the objective nature of the test and held that the provisions did not discriminate against the defendant. The decision is affirmed in *Administrative Court in C v Crown Prosecution Service*. As to the state of mind of victim, it is confirmed in *DPP v. Ramsdale* that harassment shall only be convicted if alarm or distress is actually caused. In other words, the actus reus of harassment is a subjective test based

[13] See eg *R v Sillipp; R v Krushel*.
[14] Grant, Bone and Grant (2003) at 196.
[15] Canadian Advisory Council on the Status of Women (1993) at p4.
[16] Grant, Bone and Grant (2003) at 196.
[17] Protection from Harassment Act 1997 s1.

on the actual reaction of the victim.

The UK construction of the offence necessarily stresses protection to victims over the risk of over-criminalization. Some commentaries endorsed the objective nature of the mens rea element and agreed with the court that such a provision enables offenders to receive appropriate treatments.[18] One of them pointed out that a large proportion of stalkers suffered mental illness, and opined that the legislation shall intend to provide protection regardless the conditions of the stalker.[19] Nonetheless, the objective mens rea element may do unfairness to infant or mentally disabled defendants.[20] Regarding the subjective construction of harassment, it is noted that it provides flexibility to the court to appreciate the "context-dependent nature of stalking" and provide maximum protection to victims.[21] However, it shall be noted that both of these elements can be easily satisfied and the offence covers a very large range of conduct.[22] It is criticized that the provision is "uncertain and inaccessible due to its excessively wide actus reus and mens rea" and "fails to provide sufficient safeguards against unfair conviction".[23]

Analysis and Recommendations

It is observed that numerous alternative forms of mens rea are open to the choice of legislation; and the same is true for the state of mind required of victim. The final decision necessarily is a balancing exercise between the protection of general public and the prevention of over-criminalization. The current proposed position obviously tilts towards the former.

To strike the correct balance, the goal of criminalization of stalking shall always be borne in mind. Admitted by the LRC and the government, there is no evidence pointing to the popularity of stalking in Hong Kong.[24] It is indisputable that criminalizing stalking is a preventive effort with deterrence being one of the main objectives. Of such a nature, enforcement may be stressed over other criminal law principles.[25] The LRC also explained that objective mens rea is required to "help victims who suffer at the hands of stalkers who are delusional and not capable of forming the necessary intent."[26] In other words, the effect of objective mens rea

[18] Ormerod and Underhill (2001) at 846.
[19] Finch (2001).
[20] Geach and Haralambous (2009).
[21] Finch (2002) at 710.
[22] *Ibid.*
[23] Geach and Haralambous (2009).
[24] Consultation Paper on Stalking 2.11
[25] Sayre (1933), p78-9.
[26] Consultation Paper para 3.6.

requirement is considered and balanced against the protection of public to conclude an overriding protective goal.

It is noted that different positions are assumed by foreign jurisdictions, but it is also noted that those positions are not free from criticisms, in particular the insufficiency of protection as opposed to the goals mentioned above. Therefore, the author is convinced that the proposed position is appropriate and preferred. Concerning the objective mens rea, as elaborated accurately in *R v SPC*, criminalizing only offender with subjective mens rea "exclude not only suitable punishment for the perpetrator, but also damages, and, more especially, an injunction or restraining order for the protection of the victim."[27] Absolute liability is said to be appropriate only for regulatory offences to achieve deterrence purpose.[28] It is plausible that, provided stalking concerns public safety and does not involve violence, it can be classified as regulatory offence. Also, the proposed penalty of committing harassment without intent is relatively mild. The author agrees with a commentary that stalking offence attracts little social stigma and imposing absolute liability is unlikely to be unconstitutional.[29]

Given such nature of the offence, it is also likely to justify a subjective definition of harassment. Although the offence is based on the subjective effect on the victim, the mens rea element limits the scope of liability. Of course, it is still undeniable that the broad acuts reus and mens rea elements may lead to over-criminalization and injustice. However, as the offence attracts relatively little social stigma, the author believes the protection of the public is justified to be given more weight in the present case. Furthermore, the author believes the duty to distinguish between malice intent and objective blameworthiness lies with the court in the sentencing exercise. Not only can sentencing address the potential harshness in the elements, it may also address the special circumstances of the case and provide suitable treatment to offender if needed.

In short, the author agrees with the current proposal on the required mental states of the offender and the victim for the stalking offence.

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[27] Para 19.
[28] Richardson (1987), p296.
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To stalking_consultation@cmab.gov.hk
cc
bcc
27/03/2012 07:15 Subject Oppose to legislate stalking law

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

Dear sir,

I write to oppose to legislate stalking law.

Thank you very much!

Regards,

Keith Tsang

27/03/2012 09:28

To "stalking_consultation@cmab.gov.hk" <stalking_consultation@cmab.gov.hk>
cc
bcc
Subject Opinion against legislate for 纏擾行為

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

Dear Sir,
I totally agree with the worries as expressed in 香港記者協會就纏擾行為諮詢文件向政制及內地事務局提交的意見書. Besides, I think that, in view of the recent explosion of 'dirty materials' in the Chief Executive Election, the public's rights to know is especially important and should not be compromised to the slightest extent. Any sacrifice of the public's right to know in exchange for the protection of certain private right of non-interference is just too costly at this sensitive juncture. The social costs to legislate are just tremendous compared to its trivial social benefit.

Regards,
Michael Tse
IVE (KT) Lecturer

To <stalking_consultation@cmab.gov.hk>
cc
bcc
Subject 保良局社會服務部就有關纏擾行為諮詢文件意見

27/03/2012 09:49

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

Dear Philomena,

附為保良局社會服務部有關纏擾行為諮詢文件意見，請查收。

社會服會部

保良局社會服務部就有關纏擾行為諮詢文件意見.doc

保良局社會服務部就有關纏擾行為諮詢文件意見提供如下：

前言： 保良局社會服務部轄下之**家庭危機支援服務**包括三間婦女庇護中心及以推行「家庭暴力受害人支援計劃」為主的翠林中心，對象均是家庭暴力受害人，故對於引入制約纏擾行為的法例，尤其關注，現提供有關意見如下：

意見一： ***訂立針對家庭暴力的法例及專門處理程序，包括執法、檢控和定罪準則***

我們認為家庭暴力是一項嚴重及複雜的社會問題，施虐者及受害人之間往往存在不平等的權力關係，涉及不同形式的操控性及騷擾行為，其中包括身體虐待、精神虐待及凌辱、性虐待、社交孤立、經濟封鎖、恐嚇及跟蹤等，對個人、家庭及社會造成深遠的負面影響。為了要遏止家庭暴力，我們認為除了需要跨專業團體的合作之外，具阻嚇性的法例制度亦十分重要，透過執法令施虐者為自己的行為負責，同時教育公眾人士切勿使用暴力。長遠而言，我們建議政府應訂立針對家庭暴力有關纏擾行為的法例及專門處理程序，包括執法、檢控和定罪準則。

意見二： ***支持立法禁止纏擾行為，並將纏擾行為定為刑事罪行***

政府政策及內地事務局於 2011 年 12 月份發出有關纏擾行為的諮詢文件，雖然內容並非主要針對家庭暴力，但就我們收集本局家庭危機支援服務之社工及服務使用者意見，一致支持立法禁止纏擾行為，並將纏擾行為定為刑事罪行，認為此舉對施虐者能夠產生阻嚇作用，加強保障受害人。

意見三： ***法例應包括執行細則***

上述諮詢文件只列明纏擾行為的定義，包括：

1) 一連串的行為
2) 知悉不合理的行為後果及
3) 行為使人感到驚恐或困擾

但並無為執法和檢控訂立清楚的細則。

由於纏擾行為的動機和受害者的受驚恐程度較難證明，因此我們擔心執法和檢控的部門能否有效應用此法，搜證的過程更可能會導致受害人面對質詢的壓力，甚至阻礙受害人報案的動機。我們建議有關立法需要附設具體的執行細

則，以達到法例本身的目的。

意見四： ***同意應授權法院向一名被定罪的纏擾者發出禁制令及為受害人提供民事補救的建議***

同意應授權法院向一名被定罪的纏擾者發出禁制令及為受害人提供民事補救的建議，此舉可以將制止施虐者行為列入社會的責任，改善目前需要由「權力」較低的受害人主動申請禁制令的問題，如因而缺乏動機等。

意見五： ***同意最高刑罰定為罰款 100,000 元及監禁兩年***

我們同意最高刑罰定為罰款 100,000 元及監禁兩年，以增加阻嚇作用。而法庭亦可考慮是否對明知故犯事的纏擾者處以較重的懲罰。

如有任何查詢，請致電 (刪除) ，與本局負責家庭危機支援服務 (刪除) 服務協調主任聯絡。

二零一二年三月二十七日

致
香港特別行政區
法律改革委員會

支持纏擾行為刑事化
九龍社團聯會婦女事務委員會

多年以來，因所謂「箍煲」不遂而滋擾對方，甚至引發暴力衝突的報導俯拾皆是，去年有中年漢與妻子分居後，疑因多次要求復合不果，最後到妻子工作地點涉嫌刺傷對方；不論動機是出於報復或苦戀，事件均反映出纏擾行為有機會惡化為對受害者造成心理壓力及身體傷害，同時也影響到其家庭、鄰里及同事，影響面甚廣。而在不少案件中，受害者均為女性，本會婦女事務委員會站於保護女性的立場上，支持政府就纏擾行為刑事化的建議，讓執法人員能及早介及事件，防微杜漸。

事實上，許多國家都對纏擾行為有清晰明確的法例條款，包括澳洲、加拿大、新西蘭等，而愛爾蘭更明確指出任何「使人驚恐或困擾」的行為均受到法律制約，反觀香港法律對纏擾行為的限制卻相當寬鬆：只要沒有明確違反法例，即使透過電話騷擾、監視、跟蹤等滋擾受害人，讓他們感到煩厭及驚恐，仍難有效向纏擾者定罪，反映社會低估了這種行為的嚴重性，包括對受害者所造成的精神傷害。加上，隨著現今通訊科技不斷進步，網上資訊氾濫，個人私隱已經越來越得不到保障，纏擾行為的程度也與日俱增，把纏擾行為刑事化確有需要。

同時，為了有效補償受害人因精神創傷而招致的損失，我們也支持諮詢文件中提出「民事補救」的支援措施，現在不少個案的受害人因精神困擾而導致失業、搬遷甚至需尋求精神治療。我們認為，在刑事法的支援下，民事訴訟將有一更清晰的指引，方便受害人追討賠償，保護受害者，尤其女性的應有權益。

另外，有意見提出部分傳媒工作者對於此法例的設立感到憂慮及有保留，認為記者在追訪人物時不可避免會落入「纏擾行為」的範疇之內。現時法改會在諮詢文件中提到一項「合理」條款，即以正當手段取得及報導公眾關注的資訊，其合理的行為已經可列為免責辯護之一，本會同意有關的規定，也顯示出政府提出相關法規的用意並非在於打壓傳媒工作者，相信能夠在維持新聞自由與保障人身安全間取得平衡，然而關鍵仍在於政府需多聽取業界意見，在制定相關法例時能夠清晰明確，確保新聞自由免受打擊。

總的來說，由於纏擾行為的影響層面既廣且深，除了對受害者形成持續性的憂慮和驚恐，更危及周遭人士，本會希望政府能盡快建立一套完善的法制系統，補現時刑事法及民事法的不足之處，讓遭受纏擾問題困擾的受害者，能夠重獲安逸的生活。

2012 年 3 月 27 日

Email： (刪除)

強烈反對政府就纏擾行為刑事化。

將提案給全香港市民投票支持立法與否，能夠 100%香港市民支持立法，大可繼續進行立法。若未能夠 100%香港市民支持立法便應取消。

(署名來函)

(未能確定寄件人是否願意公開姓名)

反對政府就纏擾行為刑事化。

不要以保護婦女為名，實為箝制港人言論自由。政府官員只會令香港市民更加不滿!

面對台灣政治及體制上不斷進步，而香港緊隨中國大陸不斷收緊及倒退。作為香港的一員實在感到羞恥!

(署名來函)

(未能確定寄件人是否願意公開姓名)

提出要求定立纏擾法嘅久官，
應該立即下台!

保護婦女爲名，打壓言論自
由爲實。

香港有良心的人都會堅決反
對定立纏擾法!

(署名來函)

(未能確定寄件人是否願意公開姓名)

纏擾法美其名就係保護婦女，其實只想打壓言論自由。

如果政府咁想保障婦孺，先針對保護婦女先行立法，如果效果顯著，真係幫到被纏擾嘅婦女，再加大保障範圍作諮詢。顯示出保障婦孺決心，而唔係借保障市民為名，打壓言論自由為實。

反對立纏擾法。

(署名來函)

(未能確定寄件人是否願意公開姓名)

敬啟者，

政制及內地事務局(第4組)負責人，

投訴仗

為了人身安全，我不想透露身份證明，敬請原諒。

我是天水圍天恩邨居民，入住前，我找了房署承辦商(裝修)當賬，他計平了庄修費給我，之后庄修期間，他的行為令我有小許不滿，例，單眼眼金金望我，又暗示去吧飲酒，但工程已做大半，入住后屋邨的保安不斷騷擾我，例，出街時，一見是我，就大声講說話，又話住佢地方(房署)，都唔應酬佢地，以經計平錢給您，又找樓上男住客跟住我，同層單身男住客，知我開門出外，他又關門，出外望住我(以上行為重覆多次)因我亦是單身住客，應該是本座保安所為，這個保安，在我出街，或等車，佢就同人(男)說一些淫意說話，當時只得我一個在等，在07.08年，很多不同面孔的保安在我面前出現，望住我笑淫淫，他們利用天恩邨商場攝錄机，知道我幾時回家，便會在我住的樓下附近出現，有時是房署的上門維修職員，間中會講一些語帶恐嚇成份的話，有一段時間我返晚間夜校，當我晚上放學回家，家中電話有電話号碼出現，(重覆多次)，至我停學后就冇收到，還有一保安在我返夜學期間，落車車站附近停留，一見我落車，就向我方向行近，(重覆多次)本座保安，在巡樓時見我開門出外，做出不同淫面乳，我曾打電話房署投訴佢，例，在天恩商場步廣內遇見天恩邨保安，他做不文動作，跟住回到自住樓下又見到另一保安他們玩搖力寶，(佢地都眼金金望住我)同埋，一見你穿著靚些，他們便會出現，在大堂等車，由头望到落尸，(多次)，我66較貼事，又要返工，冇有不見到，不聽到，就算了吧，但在2011年上半年，我有傢具要搬走，咁啫，保安巡數，他主動幫我搬走，我亦給他紅包，事隔之天，放工回家，鐵閘牌給人除掉在地上很奇怪的，我用手伸入也可以摸到牌的位置，我相信是這個保安做的，我冇親眼見到，他亦冇會比我見到，先至我不在家的時候做，根據往昔的日子，他的行為動作實令人憤怒，我亦投了訴，又致电房署，(主任)

(未能確定寄件人是否願意公開姓名)

在07年時，有一次放工回家途中，樓上突然掉東西落街，掉在我头上擦過，東西是很多的膠珠，但當時的声音似開了音响那麼大（X机），又好似有大型東西掉落街上，當時，我會担心自身安全。我有同本座邨座头訴說，他好似已預料到，2011年，下半年（搬走傢具之后）相知多年的朋友，但這朋友已变了質，她知她的女性朋友來我家中坐，量度我家中物件，我的人工用唔晒，又問我想唔想入房署做工，又提及當年庇修事件，对話似識得房署的人，但當我問佢是否識房署的人，她又說，只不過識吓，第二天又見到經常在我面前出現的保安，放工后在鐵閘（自住樓）入大堂，他一見到我，一直望住眼都不轉，我相信同我鐘朋友有关（來探訪），在過二天，我返工很早，夜更保安攞埋（樓上的）望望，企在對面報，一見我出報，就轉身望住我（保安位有电視望住報）（重覆多天）还有，我轉工，轉工作時間，房署保安又會出現我面前，好像要我向他們交代我的生活（重覆多次）雖然房署承辦商計平了給我，但部是有比錢（庇修費），有人做錯本生意的，佢地係咪覺得單身女子，生活唔到呢，所以，我讚成纏擾行為要立法，还有，本座的保安，行為差，品德又差，投訴過給房署知，他重可以在此工作，我會覺得房署內部机制关係很有問題，亦即是某一方面勢力很大，希望政府監管。

以上，如有文字上的表達不好，見諒！

我希望政制及內地事務局（第4組）負責人可看到。

25-3-2012

上

（未能確定寄件人是否願意公開姓名）

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Subject 獨立媒體（香港）反對制訂《纏擾法》意見書

27/03/2012 11:57

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獨立媒體（香港）反對制訂《纏擾法》意見書

獨立媒體（香港）（下稱本會）的宗旨為推動民間的獨立媒體發展，就特區政府計劃把纏擾行為刑事化，表示強烈反對。本會認為此項立法將嚴重損害香港的新聞採訪與集會抗議自由，並妨礙公民媒體的發展。

一) 香港沒有需要訂立《纏擾法》

1. 打擊新聞採訪自由

香港社會並沒有強烈的聲音要求刑事化纏擾行為，亦沒有一些嚴重的法庭案例出現，令社會覺得非立此法不可。這令我們非常擔心《纏擾法》的立場背景是要進一步收窄已經在不斷後退的新聞自由。事實上，這次立法，剛好又在副總理李克強訪港後，執法機關多番公然打壓新聞採訪的背景下提出。

諮詢文件特別引入英國同類型法案中「集體騷擾」一項，即多人纏擾同一對象一次即算犯罪。若多位記者追訪政治或公眾人物，社會議題時，集體採訪隨時變「集體纏擾」。

再加上，在諮詢文件上，對纏擾行為的定義，包括「注視或暗中監視受害人的居所或工作地點」、「在不受歡迎的情況下登門造訪」、「向第三者（包括社會）披露受害人的私隱」、「在街上尾隨受害人」、「對受害人作出虛假指控」或「謾罵」等，均與記者採訪和新聞言論自由相關，法例一旦通過，將來記者追查涉及公眾利益議題，如特首有沒有貪污、特首候選人有沒有行為失當或箝制言論自由等，會步步為艱、採訪時如履薄冰，定必損害新聞自由，不利媒體監察權貴，為公義和弱勢群體發聲。

2. 打擊示威抗議自由

除上述有礙新聞自由的定義外，纏擾行為還包括「送贈受害人不欲接受的禮物或古怪物件」和「阻礙合法活動」等，又由於「受騷擾」、「令人煩厭」的界定不清，法例將嚴重打擊示威抗議自由。譬如說，向欠薪老闆追討薪金當然會令到他們「受到困擾」，立法後打工仔如何去與老闆討公道？向高官送上示威物品、接二連三向特首詢問粟米石斑飯價錢會否變成「贈送不受歡迎物品」？菜園村和美孚新邨八期屋主保衛家園而阻止工程進行、雷曼苦主請願或佔領中環等行動會否變成「阻礙合法活動」？將來示威者以鏡頭紀錄警員有否濫權會否被告以纏擾？本會深切憂慮條例將打壓社運、遊行集會的權利以及方式。

3. 纏擾會否包括網絡言論與表達

《纏擾法》的諮詢文件雖然沒有處理「網絡世界」的活動，但越來越多的現實世界的法例，都延伸至互聯網，當中包括「色情及淫褻物品檢控條例」、「違反公德行為」等，這令人擔心，網上的「虛假指控」或「謾罵」，以致目前網民的「惡搞」式表達方法，會否成為纏擾行為？本會認為這項立法會對網絡上的言論自由造成巨大的威

方法，會否成為纏擾行為！本會認為這項立法會對網絡上的言論自由造成巨大的威脅。

二) 不應把把纏擾行為定為刑事罪行

本會認為目前大部份的纏擾行為，均能透過現有刑法，如「家暴條例」及民事訴訟解決，絕無必要另立為刑事罪行。

「刑事化」纏擾行為後，投訴者只需要表示感到困擾，便可以報警求助。低門檻的要求，大大減低投訴人的報案成本：政府代為檢控和執法，法庭訴訟開支全由公帑支付。這令投訴者和被投訴者處於極不公平位置，高官商賈反而不用一分一毫便能對付異見者及採訪媒體。若警方沒有計劃增加資源處理眾多的求助，在警力不足情況下，將來會否出現選擇性執法？可以預期，法例實施後容易否變成權貴高官打壓異議聲音和追蹤採訪的工具。

三) 免責辯護難以保障公民權

有建議把「新聞採訪」等納入為免責辯護，然而免責辯護是要等案件進入法庭程序時作為抗辯理由，而檢控過程本身已阻礙了正常的採訪活動，而新聞機構亦要負擔昂貴的訴訟費。此外，「新聞採訪」的免責條款，難保障無償的公民採訪活動，結果變相會把公民新聞採訪活動刑事化。

本會認為《纏擾法》將剝奪每一個公民的採訪、表達、遊行、示威抗議等權利，不應該展開立法程序。政制及內地事務局在行政長官換屆期間提出諮詢，又把諮詢期定在選舉月內，實屬不妥，局方終止立法程序。政府既然指出纏擾行為常出現於家庭或戀人關係，我們促請政府盡快修改家暴條例，加入纏擾行為刑事化，保障受虐人士，而不是捆綁式為纏擾行為立法，捨易取難。

–

Hong Kong In-media
獨立媒體 (香港)

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政制及內地事務局局長譚志源先生：

本人認為香港沒有需要訂立《纏擾法》，理由如下。

1. 打擊新聞採訪自由

香港社會並沒有強烈的聲音要求刑事化纏擾行為，亦沒有一些嚴重的法庭案例出現，令社會覺得非立此法不可。這令我們非常擔心《纏擾法》的立場背景是要進一步收窄已經在不斷後退的新聞自由。事實上，這次立法，剛好又在副總理李克強訪港後，執法機關多番公然打壓新聞採訪的背景下提出。

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方法，會否成為纏擾行為？本會認為這項立法會對網絡上的言論自由 造成巨大的威脅。

二) 不應把把纏擾行為定為刑事罪行

本會認為目前大部份的纏擾行為，均能透過現有刑法，如「家暴條例」及民事訴訟解決，絕無必要另立為刑事罪行。

「刑事化」纏擾行為後，投訴者只需要表示感到困擾，便可以報警求助。低門檻的要求，大大減低投訴人的報案成本：政府代為檢控和執法，法庭訴訟開支全 由公帑支付。這令投訴者和被投訴者處於極不公平位置，高官商賈反而不用一分一毫便能對付異見者及採訪媒體。若警方沒有計劃增加資源處理眾多的求助，在警力 不足情況下，將來會否出現選擇性執法？可以預期，法例實施後容易否變成權貴高官打壓異議聲音和追蹤採訪的工具。

三) 免責辯護難以保障公民權

有建議把「新聞採訪」等納入為免責辯護，然而免責辯護是要等案件進入法庭程序時作為抗辯理由，而檢控過程本身已阻礙了正常的採訪活動，而新聞機構亦要負擔昂貴的訴訟費。此外，「新聞採訪」的免責條款，難保障無償的公民採訪活動，結果變相會把公民新聞採訪活動刑事化。

我認為《纏擾法》將剝奪每一個公民的採訪、表達、遊行、示威抗議等權利，不應該展開立法程序。政制及內地事務局在行政長官換屆期間提出諮詢，又把 諮詢期定在選舉月內，實屬不妥，局方終止立法程序。政府既然指出纏擾行為常出現於家庭或戀人關係，我們促請政府盡快修改家暴條例，加入纏擾行為刑事化，保 障受虐人士，而不是捆綁式為纏擾行為立法，捨易取難。

市民

吳學東

--

吳學東 (Ng Hok Tung, Eric)
Phone number: (刪除)
E-mail address:

"The hottest places in hell are reserved for people , who, in times of great moral crisis maintain their neutrality." Dante Alighieri

To stalking_consultation@cmab.gov.hk
cc
bcc
27/03/2012 12:35 Subject 反對制訂《纏擾法》意見書
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致 政制及內地事務局

本人就特區政府計劃把纏擾行為刑事化，表示強烈反對。本人認為此項立法將嚴重損害香港的新聞採訪與集會抗議自由，並妨礙公民媒體的發展。

一) 香港沒有需要訂立《纏擾法》

1. 打擊新聞採訪自由

香港社會並沒有強烈的聲音要求刑事化纏擾行為，亦沒有一些嚴重的法庭案例出現，令社會覺得非立此法不可。逼令我們非常擔心《纏擾法》的立場背景是要進一步收窄已經在不斷後退的新聞自由。事實上，這次立法，剛好又在副總理李克強訪港後，執法機關多番公然打壓新聞採訪的背景下提出。

諮詢文件特別引入英國同類型法案中「集體騷擾」一項，即多人纏擾同一對象一次即算犯罪。若多位記者追訪政治或公眾人物，社會議題時，集體採訪隨時變「集體纏擾」。

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2. 打擊示威抗議自由

除上述有礙新聞自由的定義外，纏擾行為還包括「送贈受害人不欲接受的禮物或古怪物件」和「阻礙合法活動」等，又由於「受騷擾」、「令人煩厭」的界定不清，法例將嚴重打擊示威抗議自由。譬如說，向欠薪老闆追討薪金當然會令到他們「受到困擾」，立法後打工仔如何去與老闆討公道？向高官送上示威物品、接二連三向特首詢問粟米石斑飯價錢會否變成「贈送不受歡迎物品」？菜園村和美孚新邨八期屋主保衛家園而阻止工程進行、雷曼苦主請願或佔領中環等行動會否變成「阻礙合法活動」？將來示威者以鏡頭紀錄警員有否濫權會否被告以纏擾？本人深切憂慮條例將打壓社

運、遊行集會的權利以及方式。

3. 纏擾會否包括網絡言論與表達

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Ocean

To stalking_consultation@cmab.gov.hk
cc
bcc
27/03/2012 12:44 Subject 反對政制及內地事務局擬議另立新例禁制纏擾行為
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

致香港特區政府、政制及內地事務局：

本人(name) 身分證號碼(刪除) 是一名香港永久居民，反對政制及內地事務局擬議另立新例禁制纏擾行為。

原因有：

一，政府對纏擾行為的定義，跟公眾理解不同。如果只是男歡女愛，追債方面，可以在《家庭及同居關係暴力條例》、《放債人條例》及《業主與租客條例》中加入禁止纏擾行為的條款。

二，如果另立新例禁制纏擾行為，那麼記者追訪公眾人物，會否屬纏擾行為？政府怎樣平衡公眾的知情權？

三，如果記者追訪涉及公眾利益事件時可以豁免，豁免的過程是如何制訂，難道要向法庭申請？

四，例如上次唐英年約道7號，宅外大量吊雞車，這會否算是「纏擾」，而遭禁止？

五，遊行示威，算不算「纏擾」？

六，街坊在政府總部門追著梁振英的車，想遞信給他，但他的司機奪門而出，情況狼狽，這又算不算「纏擾」？

七，「纏擾」應分數類，我覺得只適宜規管的是涉及男歡女愛及錢債關係，其餘絕對不應立法。

香港政府要有良心，另立名目，如果把遊行示威、傳媒追訪當作「纏擾」，絕對要反應。

(寄件人要求不具名公開意見)

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27/03/2012 12:52 Subject 反對制訂《纏擾法》
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你好！

本人認同獨立媒體（香港）的「獨立媒體（香港）反對制訂《纏擾法》意見書」，詳文如下：

一) 香港沒有需要訂立《纏擾法》

1. 打擊新聞採訪自由

香港社會並沒有強烈的聲音要求刑事化纏擾行為，亦沒有一些嚴重的法庭案例出現，令社會覺得非立此法不可。這令我們非常擔心《纏擾法》的立場背景是要進一步收窄已經在不斷後退的新聞自由。事實上，這次立法，剛好又在副總理李克強訪港後，執法機關多番公然打壓新聞採訪的背景下提出。

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將來示威者以鏡頭紀錄警員有否濫權會否被告以纏擾？本會深切憂慮條例將打壓社運、遊行集會的權利以及方式。

3. 纏擾會否包括網絡言論與表達

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盧敏樺

電話：(刪除)

身份證號碼：(刪除)

To stalking_consultation@cmab.gov.hk
cc
bcc
27/03/2012 13:49 Subject 反對制訂《纏擾法》意見書

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敬啟者：

獨立媒體（香港）反對制訂《纏擾法》意見書

獨立媒體（香港）（下稱本會）的宗旨為推動民間的獨立媒體發展，就特區政府計劃把纏擾行為刑事化，表示強烈反對。本會認為此項立法將嚴重損害香港的新聞採訪與集會抗議自由，並妨礙公民媒體的發展。

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將來示威者以鏡頭紀錄警員有否濫權會否被告以纏擾？本會深切憂慮條例將打壓社運、遊行集會的權利以及方式。

3. 纏擾會否包括網絡言論與表達

《纏擾法》的諮詢文件雖然沒有處理「網絡世界」的活動，但越來越多的現實世界的法例，都延伸至互聯網，當中包括「色情及淫褻物品檢控條例」、「違反公德行為」等，這令人擔心，網上的「虛假指控」或「謾罵」，以致目前網民的「惡搞」式表達方法，會否成為纏擾行為？本會認為這項立法會對網絡上的言論自由造成巨大的威脅。

二) 不應把把纏擾行為定為刑事罪行

本會認為目前大部份的纏擾行為，均能透過現有刑法，如「家暴條例」及民事訴訟解決，絕無必要另立為刑事罪行。

「刑事化」纏擾行為後，投訴者只需要表示感到困擾，便可以報警求助。低門檻的要求，大大減低投訴人的報案成本：政府代為檢控和執法，法庭訴訟開支全由公帑支付。這令投訴者和被投訴者處於極不公平位置，高官商賈反而不用一分一毫便能對付異見者及採訪媒體。若警方沒有計劃增加資源處理眾多的求助，在警力不足情況下，將來會否出現選擇性執法？可以預期，法例實施後容易否變成權貴高官打壓異議聲音和追蹤採訪的工具。

三) 免責辯護難以保障公民權

有建議把「新聞採訪」等納入為免責辯護，然而免責辯護是要等案件進入法庭程序時作為抗辯理由，而檢控過程本身已阻礙了正常的採訪活動，而新聞機構亦要負擔昂貴的訴訟費。此外，「新聞採訪」的免責條款，難保障無償的公民採訪活動，結果變相會把公民新聞採訪活動刑事化。

本會認為《纏擾法》將剝奪每一個公民的採訪、表達、遊行、示威抗議等權利，不應該展開立法程序。政制及內地事務局在行政長官換屆期間提出諮詢，又把諮詢期定在選舉月內，實屬不妥，局方終止立法程序。政府既然指出纏擾行為常出現於家庭或戀人關係，我們促請政府盡快修改家暴條例，加入纏擾行為刑事化，保障受虐人士，而不是捆綁式為纏擾行為立法，捨易取難。

以上內容均代表本人對此法的意見。

香港市民Rae Ng 謹啟

To "stalking_consultation@cmab.gov.hk" <stalking_consultation@cmab.gov.hk>
cc
bcc
27/03/2012 14:13 Subject 本人促請政府不要落實這兩分報告的建議
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

本人同意"香港記者協會就纏擾行為諮詢文件向政制及內地事務局提交的意見書",
本人促請政府不要落實這兩分報告的建議.

(署名來函)

香港記者協會就纏擾行為諮詢文件向政制及內地事務局提交的意見書

香港記者協會就纏擾行為諮詢文件向政制及內地事務局提交的意見書

2012年3月2日

1. 政府於2011 年12 月發表諮詢文件，建議就纏擾行為立法，香港記者協會（記協）表示關注。本會認為，無辜市民應該得到免受纏擾的保障，可是，本會擔心政府建議的新例不單影響正當的採訪活動，更可能會因被人濫用而令調查報道的工作受阻。

2. 眾所周知，記者履行天職時會提出問題，當得不到答案時，會不斷要求受訪者回應；當受訪者拒絕澄清時，記者會在被訪者出沒的地方等候；有些時候甚至會跟蹤不想其胡作非為受公眾監察的人士。凡此種種正當追訪活動，並不是全都受那些不想向公眾問責的被訪者歡迎的，按政制及內地事務局諮詢文件內就纏擾行為所下定義，這些追訪活動很容易變成非法行為，故此，就纏擾行為立法將嚴重窒礙新聞自由，是顯而易見的。而近期一宗事例，足證反纏擾行為法例極有可能被濫用：當北韓領袖金正日逝世後，有記者到北韓駐港領事館尋求回應，事件雖明顯跟公眾利益相關，領事館一位官員卻報警，要求警方「勸喻」記者離開。

免責辯護沒用

3. 本會認為，諮詢文件中第3.38(c) 段訂明「在案中的情況下做出該一連串行為是合理的」的免責辯護根本沒用。從經驗得知，受追訪者只想阻撓傳媒報道，未必會把案件告上法庭，令在法庭上才用得著的免責辯護派不上用場。

4. 政府於諮詢文件中大量引用的英國《1997年免受騷擾法令》（下稱免受騷擾法），在當地的執法經驗亦令我們相信，任何反纏擾法在香港都很容易被濫用。至於政府在諮詢文件中建議引入的「在特殊情況下的合理行為」，其實亦源自英國有關法令，港府聲稱這是一個重要的免責辯護，本會不敢苟同，事實上，《免受騷擾法》已闊至涵蓋報紙和其他刊物。

5. 2007 年，英國法庭根據《免受騷擾法》頒令，在一宗針對核能公司的示威中，禁止英國攝影記者阿畢(Adrian Arbib)拍攝和攝錄任何涉及電廠推土以填平兩個湖泊及傾倒電廠廢料的人士及其車輛[i]。這事件明顯與公眾利益悠關，但法官依然頒下禁令，使該攝影記者無法工作。

6. 這宗案例曾被一位律師在《衛報》撰文[ii]提及，而總部設在倫敦的表達自由擁衛組織「第十九條」(Article 19)向聯合國人權委員會第九十一次會議提交的報告亦以此為例指出，「《免受騷擾法》由防止恐嚇

6. 這宗案例曾被一位律師在《衛報》撰文[ii]提及，而總部設在倫敦的表達自由擁衛組織「第十九條」(Article 19)向聯合國人權委員會第九十一次會議提交的報告亦以此為例指出，「《免受騷擾法》由防止恐嚇的條例演變成恐嚇示威者的工具」[iii]。「第十九條」因此建議英國考慮修例，以免當局以此打壓真正的示威活動。

7. 上文提及的《衛報》文章更指出，不少人放棄以誹謗法提出索償，改為透過《免受騷擾法》申請禁令，這在索償者並非志在獲得巨額賠償，而是想阻止與訟人表達意見時，情況尤其明顯。

8. 上述文章又列舉另一案例[iv]說明問題：《太陽報》曾刊登文章，指經黑人女子湯瑪仕(Esther Thomas)投訴三名警務人員涉嫌語帶種族主義後，三人被降職。湯瑪思指文章令她受到困擾，成功循《免受騷擾法》向《太陽報》提起訴訟。此外，運輸工會總幹事戈卜柏(Bob Crow)亦利用該法律禁止《倫敦旗幟晚報》(London Evening Standard)對他作出人身攻擊。

《免受騷擾法》涵蓋範圍廣泛

9. 另一篇文章[v]討論2011 年2 月15 日英國上訴庭就「伊克波訴律師行」(Iqbal versus Dean Manson Solicitors)的判決時指出，「《免受騷擾法》具劃時代意義，涵蓋範圍廣泛，連與纏擾和人身騷擾無關的行為，尤其是媒體的騷擾行為亦受到規管…。」

10. 有關評論點出一個事實，就是反纏擾法可以、也極有可能被濫用。條例容許任何人士藉此阻止記者的正當採訪活動，諮詢文件以導致驚恐或困擾才構成騷擾，明顯是不足以杜絕濫用。

11. 令人遺憾的是，政制及內地事務局漠視《免受騷擾法》對新聞自由帶來的負面影響，還作出更具爭議的建議：「一個人如在不同時候對兩個或以上的人做出一連串他知道或應該知道涉及騷擾的行為，目的是勸使任何人不要做其有權做的事情或做其無責任要做的事情，即屬犯法。」（詳情見第3.17 段）報告更以英國爭取動物權益的抗議活動為例加以說明。

12. 記協強烈反對這個明顯有政治元素及跟傳統纏擾概念無關的建議。以香港的情況，根本不應引入有關法律概念，因為抗議等人權受到《基本法》和《香港人權法案條例》所保障。諮詢文件亦承認，英國法律想解決的問題，在香港並不嚴重，而其他司法管轄區的反纏擾行為法例也沒有類似的條款，因此香港不應立法禁止。

13. 此外，歐盟大部分國家也沒有就禁制纏擾行為立法。根據歐盟2010年發表的研究報告[vi]，二十七個成員國中，只有十二個國家訂定有關法例。另一分歐盟委託進行的研究報告[vii]更建議成員國應該採取謹慎的態度去審視這法律的效用，並應就纏擾問題多做公眾教育工作。

正確方向

14. 記協反對政制及內地事務局建議的新法內容，因為有關立法建議涵蓋的範圍太廣，而纏擾的定義亦過於含糊。本會更質疑該立法建議能否符合普通法系的立法要求 - 須有迫切的社會需要。按歐洲人權法庭的標準，政府立法干預須與正當的目標相適應，而提出的理據亦須相關及足夠，才算有迫切的社會需要。政制及內地事務局引用香港法律改革委員會（法改會）多年前的意見作為立法基礎 -「現行的民事法及刑事法所能提供的保障是零碎、不明確及沒有實效的」，所以纏擾問題需要解決。然而，情況已經有所改善。

15. 法改會十二年前表示，「有些涉及纏擾行為的、惹人反感的行徑可以按照現行法律處理」。誠然，通過加強執法，案件數量已然下降，保安局局長李少光數次在立法會會議中指出，涉及收債的非刑事滋擾，情況有所改善。他2011年6月提供的數據顯示，警方在2006年到2010年間接獲的舉報個案日漸減少，而2011年首五個月的數字更較前一年同期下跌兩成。

16. 至於牽涉個人親密關係的纏擾，《家庭暴力條例》已修訂至涵蓋同居關係，意即更多人受這條例保護。

17. 有感於禁止纏擾的法例可能會箝制新聞自由，婦女團體[viii]於2006年至2007年間再向政府重提建議，在擴闊範圍的《家庭及同居關係暴力條例》中加入反纏擾的條款，而不是訂定一條全新的法律限制纏擾行為。這是一種合理而又兼顧人權的取態，可惜政府對此建議充耳不聞。

擴闊範圍的《家庭及同居關係暴力條例》中加入反纏擾的條款，而不是訂定一條全新的法律限制纏擾行為。這是一種合理而又兼顧人權的取態，可惜政府對此建議充耳不聞。

18. 記協無意揣測政府建議立法背後是否隱含政治動機，但會支持有關婦女團體的建議。本會因此促請政府撤回另立定義含糊的新例底建議，相反，政府應該一心一意地在現行法例中加入定義狹窄的反纏擾行為，以保障市民免受諮詢文件第2.11段中所列案例之苦。事實上，第2.11(c)段中提及的前電視主播雖曾受毫不認識的情緣纏擾，但她已向報章表明，她寧願不要這條威脅到新聞自由的法例。

19. 本會亦注意到諮詢文件提及法改會早年的兩分報告：侵犯私隱的民事責任，以及私隱和媒體侵擾。傳媒憂慮這兩分報告的建議一旦落實，暫將嚴重損害香港的新聞自由，當中尤以成立一個有法定權力的報業評議會來處理私隱投訴的建議更為惹人關注。本會促請政府不要落實這兩分報告的建議。

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[i] RWE Npower v Carrol 參見 http://www.epuk.org/News/472/npower-injunction-on-epuk-member

[ii] 見2007年3月5日《衛報》題為《騷擾新聞自由》的文章，筆者為律師賴蒙特(Duncan Lamont)。

[iii] 見「第十九條」報告第十二頁

[iv] 湯瑪仕訴新聞報業集團及安奴 (Thomas v News Group Newspapers Ltd & Anor [2001] EWCA Civ 1233)
裁決超連結：http://www.bailii.org/ew/cases/EWCA/Civ/2001/1233.html

[v] 卡雲撰文：《個案：依克巴訴甸文遜，以信件作出騷擾》
全文超連結：
http://inforrm.wordpress.com/2011/02/25/case-law-iqbal-v-dean-manson-harassment-by-letter-edward-craven/

[vi] 《針對婦女、兒童及性取向暴力：評估統一立法可能性、機會及需要的可行性研究》第67頁

[vii] 《保護婦女免受新的纏擾罪行之苦：歐盟成員國的立法取態比較》

- [viii] 持有有關意見的婦女團體包括平等機會婦女聯席、群福婦女會等。

(寄件人要求不具名公開意見)

To <stalking_consultation@cmab.gov.hk>
cc
bcc
27/03/2012 13:08 Subject 強烈反對纏擾法

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

Dear Sir/Madam,

I am writing to express my objection in doing the 纏擾法, as this is not a good rule to protect people, in contrary, it is a very terrible way in showing the society that the Government is going to further slim down the freedom of speech & freedom of act! Pls. do not trepass our freedom further!!! We have not left much and WE NEED TO PROTECT WHAT WE HAVE NOW!!!!

Cheers,

(signed)

(The sender requested anonymity)

(寄件人要求以保密方式處理意見書)

(The sender requested confidentiality)

To stalking_consultation@cmab.gov.hk
cc
bcc
27/03/2012 14:48 Subject 反對另立《纏擾法》

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

反對另立《纏擾法》

我反對政制及內地事務局擬議另立新例禁制纏擾行為，因為有關新例嚴重影響新聞自由和窒礙市民請願遊行等表達自由。

本人認為，政府可考慮在《家庭及同居關係暴力條例》、《放債人條例》及《業主與租客條例》中加入禁止纏擾行為的條款，以保障受前戚舊愛纏擾的男女、無辜受收債行為影響和因強迫收樓而受逼迫的小市民。引入上述相關法例的新增條款時，應以保障公眾利益和生命安全為前題，而不能避重就輕，以執法困難或諸多藉口息事寧人，漠視小市民日常生活受壓迫所遭遇到的驚恐不安，變相縱容家暴或錢財糾紛等輕易危害人身，和構成對暴力恐嚇性的纏擾行為坐視不理。

有關現時提出另立《纏擾法》，並無實質需要，因為新例將剝奪每一個公民的採訪、知情、表達、投訴、遊行、示威等等抗議、發聲、自衛、求助的權利，更不應該在目前立法會議員只為權貴服務，而無民意認受及為民請命的議決和監察機制下，匆匆展開立法程序。再者，政制及內地事務局在行政長官換屆期間提出諮詢，又把諮詢期定在月底內結束實屬不妥，等如是向沉默無助的香港人宣布特區政府嚴刑作法，絕對不容任何異議聲音和表達機會。

我要求當局應立即終止立法程序，撤銷一再傷害香港沒有顧及公眾權益的法例，重新向公眾交代和保證特區政府仍然是中立的，服務市民，主持公道，維護正義，並確保政府機關和有關官員不會選擇性執法，一方面政治檢控社運人士和妨礙公眾和平抗爭行為；另一方面利用嚴刑峻法保護特級高官、權貴、政客等既得利益的有權位者，而根本就沒有幫助小市民解決和面對基層生活的困境，反而是提供執法者隨時隨地可以濫權施暴，壓制弱勢受害者申訴求助和掙扎求生機會，也不容傳媒記者、示威者及路見不平的圍觀群眾，進行採訪追究和喝止真正的暴力纏擾行為。

蔡淑芳 Choi Suk Fong (mobile: (刪除))
2012年3月27日

(寄件人要求以保密方式處理意見書)

(The sender requested confidentiality)

27/03/2012 16:01

To Alice Yuen <alice_yuen@fso.gov.hk>
cc David Hooi <dwkhooi@eu.gov.hk>
wcchan@fso.gov.hk
stalking_consultation@cmab.gov.hk
bcc
Subject Re: Consultation Paper on Stalking

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

Dear Alice,

I refer to the current Consultation on Stalking. There is a need to legislate in this area as soon as possible and to provide an easy access for assistance to the public.

Regards,
Anita

Anita Bagaman
Founder & CEO
RD18

THE
LAW SOCIETY OF HONG KONG
香 港 律 師 會

TELEPHONE (電話) : (852)
FACSIMILE (傳真) : (852) (deleted)
E-MAIL (電子郵件) :
WEBSITE (網頁) : (deleted)

Our Ref :
Your Ref :
Direct Line :

S/F (3) to CR 7/22/12 (2011) Pt.11

27 March 2012

Mrs. Philomena Leung,
Office for Secretary for Constitutional
and Mainland Affairs,
Constitutional and Mainland Affairs Bureau,
East Wing, Central Government Offices,
2 Tim Mei Avenue, Tamar,
Hong Kong.

Dear Mrs. Leung,

Re: Consultation Paper on Stalking

I attach the Law Society's submissions on the captioned Consultation Paper.

The Law Society will be posting this document on the public page of its website and has no objections to the publication of the same by the Bureau.

Yours sincerely,

(signed)
Joyce Wong
Director of Practitioners Affairs

Encls.

P.5

THE LAW SOCIETY OF HONG KONG 香港律師會

Consultation Paper on Stalking
Submissions of the Law Society of Hong Kong

1. Offence of Harassment

(a) whether stalking should be made a criminal offence based on the LRC's recommendation that:

(i) a person who pursues a course of conduct which amounts to harassment of another, and which he knows or ought to know amounts to harassment of the other, should be guilty of a criminal offence;

(ii) for the purposes of this offence, the harassment should be serious enough to cause that person alarm or distress; and

(iii) a person ought to know that his course of conduct amounts to harassment of another if a reasonable person in possession of the same information would think that the course of conduct amounted to harassment of the other; and

Law Society's response:
We agree but subject to further refinement of the offence with reference to the *Ghosh* test.

(b) whether collective harassment and harassment to deter lawful activities should be made offences.

Law Society's response:
There does not appear to be any pressing need to legislate against collective harassment. We consider unlawful acts by debt collection agencies can be dealt with under the existing criminal law.

2. Penalty

(a) whether a single maximum penalty level for the proposed offence of harassment should be provided, irrespective of whether the offender knew or ought to have known that the conduct amounted to harassment;

Law Society's response:
The normal rules of sentencing should be applied and the discretion of the Judicial Officer should not be restricted.

(b) whether the maximum penalty for the proposed offence of harassment should be set at a fine at Level 6 ($100,000) and imprisonment for two years;

Law Society's response: We agree.

(c) whether the maximum penalty for the offences of collective harassment and harassment to deter lawful activities should be set at the same level as in (b) above; and

Law Society's response: N/A.

(d) whether the limitation period for institution of court proceedings should be specified as two years from the time when the actions taken by the stalker constituted a course of action and the cumulative effect of these actions was such that the victim was alarmed or put in a state of distress.

Law Society's response: We agree.

3. **Defences**

(a) whether the following defences proposed by the LRC for the offence of harassment, if pursued, should be provided:
   (i) the conduct was pursued for the purpose of preventing or detecting crime;
   (ii) the conduct was pursued under lawful authority; and
   (iii) the pursuit of the course of conduct was reasonable in the particular circumstances;

Law Society's response: We agree with the the 3 specified defences in (i), (ii) and (iii) above but also see our comments to Question 3(b) below.

(b) whether a defence for news-gathering activities should be subsumed under the "reasonable pursuit" defence in sub-paragraph (a)(iii) above as recommended by the LRC, or a separate, specific defence for news-gathering activities should be provided for the offence of harassment, if pursued;

Law Society's response:
We acknowledge the sensitive nature of this provision. We suggest the proposed defence of 'reasonable pursuit" could be amended as follows:

"the pursuit of the course of conduct was reasonable in the particular circumstances *including all legitimate news-gathering activities by journalists or members of the press, or conduct otherwise in the public interest*"

(c) if a specific defence for news-gathering activities should be provided, how the defence, whether qualified or not, should be framed;

Law Society's response:
This defence can be framed by subsequent case law, and is to be given its ordinary meaning.

(d) whether any other defences should be provided for the offence of harassment, if pursued; and

Law Society's response:
These can be developed by case law on "reasonable pursuit".

(e) whether, and if so what, defences should be provided for the offences of collective harassment and harassment to deter lawful activities, if pursued.

Law Society's response: N/A

4. Restraining Orders in Criminal Proceedings

(a) whether or not a court sentencing a person convicted of the offence of harassment, if pursued, should be empowered to make a restraining order prohibiting him from doing anything which causes alarm or distress to the victim of the offence or any other person as the court thinks fit; and

Law Society's response: We agree.

1. A breach of the restraining order should be a distinct offence and the court has the power to sentence the defendant. The matter should be akin to breaches of probation orders or community service orders.

2. We recommend such restraining orders to have a validity of up to 24 months.

(b) if so:

(i) whether the restraining order may be made in addition to a sentence imposed on the defendant convicted of the offence of harassment, a probation order or an order discharging him absolutely or conditionally;

Law Society's response: We agree.

(ii) whether the duration of the order has to be specified or the order may have effect for a specified period or until further notice;

Law Society's response: We agree.

(iii) whether the prosecutor, the defendant or any other person mentioned in the restraining order should be allowed to apply to the court for it to be varied or discharged; and

Law Society's response: We agree.

(iv) whether the maximum penalty for breaching a restraining order should be set at the same level as that proposed for the offence of harassment (i.e. a fine at Level 6 ($100,000) and imprisonment for two years).

Law Society's response: Yes.

5. **Civil Remedies for Victims**

(a) a person who pursued a course of conduct which amounted to harassment serious enough to cause alarm or distress of another should be liable in tort to the object of the pursuit; and

Law Society's response: We agree.

(b) the plaintiff in an action for harassment should be able to claim damages for any distress, anxiety and financial loss resulting from the pursuit and to apply for an injunction to prohibit the defendant from doing anything which causes the plaintiff alarm or distress.

Law Society's response: We agree.

6. **Enforcement of Injunctions**

(a) whether the following LRC recommendations should be taken forward:

(i) where a civil court grants an injunction in an action for harassment, it should have the power to attach a power of arrest to the injunction;

Law Society's response: We agree.

(ii) a police officer should be able to arrest without warrant any person whom he reasonably suspects to be in breach of an injunction to which a power of arrest is attached;

Law Society's response: We agree.

(iii) the court dealing with the breach should have the power to remand the defendant in custody or release him on bail;

Law Society's response: We agree.

(iv) where the court has not attached a power of arrest to the injunction, the plaintiff should be able to apply to the court for the issue of a warrant for the arrest of the defendant if the plaintiff considers that the defendant has done anything which he is

prohibited form doing by the injunction; and

Law Society's response: We agree.

(v) if the defendant is arrested under such a warrant, the court dealing with the breach should have the power to remand him in custody or release him on bail; and

Law Society's response: We agree.

(b) our view that a breach of a civil injunction should not be made a criminal offence.

Law Society's response: We agree.

The Law Society of Hong Kong
Criminal Law and Procedure Committee
27 March 2012

To "stalking_consultation@cmab.gov.hk" <stalking_consultation@cmab.gov.hk>
cc
bcc
27/03/2012 17:53 Subject 制訂《纏擾法》意見

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

Dear Sir/ Madam,
I am worry that this new policy will bring a great impact on the freedom of speech for the public. the reporters may find out the truth by their own strategies, or protesters can't perform their demonstration in their own way. there are more limitations for them to express their opinions. I think diversity is one of the core values of Hong Kong. So don't deprive the media and public of the rights to speak. thanks
yours faithfully,
Cheng Man Yee

27/03/2012 18:14

To "stalking_consultation@cmab.gov.hk" <stalking_consultation@cmab.gov.hk>
cc
bcc
Subject 反對另立《纏擾法》

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香港沒有需要訂立《纏擾法》
本會認為《纏擾法》將剝奪每一個公民的採訪、表達、遊行、示威抗議等權利，不應該展開立法程序。政制及內地事務局在行政長官換屆期間提出諮詢，又把諮詢期定在選舉月內，實屬不妥，局方終止立法程序。政府既然指出纏擾行為常出現於家庭或戀人關係，我們促請政府盡快修改家暴條例，加入纏擾行為刑事化，保障受虐人士，而不是捆綁式為纏擾行為立法，捨易取難。反對另立《纏擾法》

Dorothy Hui
2012年3月27日

To stalking_consultation@cmab.gov.hk
cc
bcc
27/03/2012 18:42 Subject Views on Stalking Legislation
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Views are as below :

1. Legislation: yes (because not enough protection under prevailing laws, difficult to proscute).

(2) criminal offence: yes (causing psychological harm to victim).

3. penalty: yes (as recommended).

4. restraining order: yes (to protect victim).

5. civil remedies for victim: yes (to compensate loss caused to victim).

6. injunction order: yes (to protect victim).

Hope that our views are considered because foreign countries like UK has enacted already due to urgent needs.

Regards,

Karen Hon

To stalking_consultation@cmab.gov.hk
cc
bcc
27/03/2012 20:06 Subject 小市民的意見

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如果立法規管纏擾, 我是讚成的。不過, 對於纏擾的定義, 除了政府宣傳片中的, 還有沒有其他例子?
如果行為會引起對方不安, 應該阻止。不過相關的定義, 如: 不安能否用科學的方法去觀察得到, 應該詳細考慮。
相關的立法會否給警方過大的權力?
這大概是一般人會考慮到的。
希望你們能夠考慮得更多更完善。

To <stalking_consultation@cmab.gov.hk>
cc
bcc
27/03/2012 20:30 Subject Submission re the Consultation Paper on Stalking
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

Dear Sir/Madam,

Attached please find my submission to the CMAB's consultation on stalking.

Cheers,

Fionna Ng Response to Consultation on Stalking.docx

RESPONSE TO THE PUBLIC CONSULTATION ON STALKING

Referring to captioned consultation on the criminalization of stalking, the author is of the opinion that there are cogent justifications for the establishment of an offence aimed at protecting victims of stalking and harassment activities. Nevertheless, international jurisdictions are now converging to a preference of establishing a specific stalking offence over subsuming stalking under a broad offence of harassment. This submission aims to discuss the recent developments in international stalking laws and recommend that the Hong Kong government amend the current proposal to adopt a narrower approach to criminalizing stalking behaviours.

1. Establishing Stalking as an Offence

a. Inadequacy and Ineffectiveness of Existing Legislation

Under Hong Kong's current legal regime, stalking activities pursued by common means of telephone calls, letters, unwelcomed visits, predatory behaviour and unwanted gifts[1] may be liable for, *inter alia*, sexual harassment[2], offences in connection with telephone calls or messages or telegrams[3], loitering[4], nuisances committed in public places[5] or assault[6]. However, these scattered criminal liabilities fall short of a specific stalking offence due to their implementation difficulties, lack of deterrent effect from relatively low penalties and inability to classify stalking as a socially undesirable behaviour.[7] The requirement of establishing psychological harm as subordinated to physical harm under general offences in the United Kingdom has been commented as a major hurdle to successful prosecution of stalkers who did not intend to or actually inflict personal violence.[8] Studies have also shown that jurisdictions where prosecutions of stalkers pursuant to general criminal liabilities run the risk of trivializing stalking behaviours and making it even more difficult for victims to report in an early stage.[9]

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[1] Paul Infield and Graham Platford, *Law of Harassment and Stalking* (London: Butterworths, 2000), p 2-3.

[2] Sex Discrimination Ordinance (Cap 480) s 2.

[3] Summary Offences Ordinance (Cap 228) s 20.

[4] Crimes Ordinance (Cap 200) s 20.

[5] Summary Offences Ordinance (Cap 228) s 4.

[6] Offences Against the Person Ordinance (Cap 212) s 20.

[7] *See* Law Reform Commission of Hong Kong, *Stalking Report* (Hong Kong: Printing Department, October 2000), para 4.84-4.85, p 75. The author concurs with the detailed discussion on the inadequacies of civil and criminal remedies.

[8] Emily Finch, "Stalking: A Violent Crime or a Crime of Violence" (2002) 41 Howard Journal 433.

[9] Justice Unions' Parliamentary Group, Independent Parliamentary Inquiry into Stalking Law Reform – Main Findings and Recommendations (London, February 2012), p 26.

Moreover, given the rapid development of technology, the existing offences are likely to be unable to cater for new forms of stalking behaviours like cyber stalking.[10] If a separate stalking offence is not enacted, it is foreseeable that courts will be faced with the difficult balancing exercise between preserving legislative intent and stretching the scope of offences to punish socially undesirable conduct.

*b. **Ineffectiveness of General Harassment Legislation***

Fifteen years have passed since the establishment of the United Kingdom Protection from Harassment Act 1997 (PHA) which subsumes stalking behaviours under the general offence of harassment. Ever since its enactment, the public has been widely criticizing its ineffectiveness in relation to curbing stalking and has coined the piece of legislation as an attempt to "address a narrowly conceived social harm with a widely-drawn provision".[11]

Another issue with the subsumption of stalking under harassment relates to the issues of fair labeling and fair warning which lie at the heart of criminalization of conducts by law.[12] In the proposed offence of harassment, stalkers will be prosecuted for harassment, which is a broadly defined concept, even though their conducts amount to a series of more serious activities which is often predicated on predatory intention and may lead to violent consequences. Without a specific offence of stalking, it is questionable whether fair warning is given to the public as to the undesirability of stalking activities and if the same level of prison sentence and penalties for general harassment and more serious stalking activities truly reflects the culpability and severity of stalking.

2. Lessons from Cognate Jurisdictions

This section aims to outline recent developments and criticisms of stalking laws in several jurisdictions but, in the interest of length, focus will be placed on Scotland as its recent developments represents a forthcoming internationally recommended approach.

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[10] Cynthia Fraser, Erica Olsen, Kaofeng Lee, Cindy Southworth and Sarah Tucker, "The New Age of Stalking: Technological Implications for Stalking" (2011) 61 Juv.& Fam.Court J. 51-52.

[11] Celia Wells, "Stalking: The Criminal Law Response" (1997) Crim.L.R. 464.

[12] *See* Glanville Williams, "Convictions and Fair Labelling" (1983) 42 C.L.J. 85-95.

a. United Kingdom

In 2003, the UK Home Office evaluated the effectiveness of the PHA and noted that the general act has been used to "for a variety of behaviours... but rarely stalking itself".[13] The lack of focus of the PHA in addressing stalking activities triggered a second round of public consultation on new legal mechanisms and enhanced police and court powers to better protect victims of stalking and to address cyber-stalking.[14] The UK Home Office also commissioned a further independent inquiry into the effectiveness of the PHA (results to be discussed in ***section 3a*** below) and the Prime Minister David Cameron has just recently revealed the upcoming parliamentary debate on a new anti-stalking law.

b. Scotland

Scotland did not follow the UK in enacting the PHA in 1997 and instead relied on the general offence of breach of peace to prosecute stalkers until the problematic decision of *Smith v Donnelly*[15] elevated the requirements for actus reus to require an objective severity in the conduct itself.[16] After a prolonged consultation[17], s 38 and 39 of the Criminal Justice and Licencing (Scotland) Act 2010 (CJLA) were enacted to establish a two-levels offence: (i) a general offence of intended or reckless threatening and abusive behaviour based on an act or a course of conduct which is "likely to cause a reasonable person to suffer fear or alarm" and (ii) a specific and more serious offence of stalking in which is stalking conduct is defined as following, contacting, publishing related material, monitoring, loitering, inferring with property, spying, giving things to the victim[18]. An alternative and more general reference to stalking conduct is provided using the reasonable person standard as to his expectation of causing the victim fear or alarm by his conduct.[19]

The two offences were established with a catch-all intention in mind and such an enhanced protection for victims of stalking can be achieved through the provision of the offence of threatening and abusive behaviour as a fallback position for the prosecution

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[13] Home Office, Home Office Research Study 203 – *An evaluation of the use and effectiveness of the Protection from Harassment Act 1997* (London: Research, Development and Statistics Directorate, 2000), i.

[14] *See* Home Office, *Consultation on Stalking* (London: Home Office, November 2011)

[15] *Smith v Donnelly* [2001] S.C.C.R 800.

[16] Sam Middlemiss and Laura Sharp, "A Critical Analysis of the Law of Stalking in Scotland" (2009) 73 JCL 92-95.

[17] *See* Scottish Government, "Stalking and Harassment in Scotland" (Scottish Government, 2002), available at <http://www.scotland.gov.uk/Publications/2002/11/15756/13117>

[18] Criminal Justice and Licencing (Scotland) Act 2010 s 39(6)(a)-(i)

[19] *Ibid.* s 39(6)(j)

when evidence is not sufficiently strong as to establishing a case of stalking.[20] It is worth noting that the s.38 offence of threatening and abusive behaviour is applicable in both a single incident and a course of conduct, and that it does not specify for the commission of the conduct to be against one other individual.[21]

c. ***Ireland***

The Irish legislation of s.10 Non-Fatal Offences Against the Person Act 1997, although based on the general offence of harassment, includes a direct reference to stalking by "by persistently following, watching, pestering, besetting or communicating" but does not require proof of mens rea for causing alarm, distress or harm.[22] The legal status of the Irish stalking law has been static since the Law Reform Commission Report in 2000 and there is a dearth of commentaries as to the effectiveness of the legislation.

3. The Way Forward

a. ***Improving the Scottish Model***

Recommendations have been made to the United Kingdom Home Office to slightly modify the Scottish Model to include the explicit caveat of the non-exhaustiveness of the list of stalking activities in the legislation and that the determination of a conduct as stalking depends on all factual circumstances of the case.[23] The Police Force Foundation has also submitted its views in support for a specific stalking offence.[24] A draft stalking bill has been compiled by the United Kingdom Justice Union's Parliamentary Group to insert the specific offence of stalking and reduce the penalties of the offence of harassment to reflect the difference in severity of the two offences.[25]

The author notes the rejection of the possibility of listing certain activities as within the realm of stalking behaviours as against the generality of the harassment offence. However, judging from the seemingly smooth operation of the Irish harassment offence[26] and the increasingly recognized Scottish model, both of which include references to

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[20] *Ibid.* s 39(8) and (9)

[21] *Ibid*, s 38 (1) and (3)(b)

[22] Non-Fatal Offences Against the Person Act s 10(1)

[23] *See* n 9 above, p 24.

[24] Police Foundation, *Home Office: Consultation on Stalking – The Police Foundation's Response* (London, November 2011) p 6.

[25] *Ibid*, p 30

[26] Modena Group on Stalking, Protecting Women From the New Crime of Stalking: A Comparison of Legislative Approaches within the European Union (Modena, Italy, April 2007), p 52-54.

stalking behaviours, there is no reason for Hong Kong to reject the inclusion of a non-exhaustive list of stalking activities for the specific offence of stalking.

b. Modifying The Current Proposal

As the Scottish Model has proved to be statistically more efficient in convicting stalkers and legally easier to implement, it is recommended that the current proposal be amended as follows to effectively protect vulnerable victims from the prolonged harm of stalking activities. The establishment of a specific stalking offence in Hong Kong can also helps pave the foundation for an international harmonization of stalking laws to aid legal enforcement of emerging forms of cross-border cyber-stalking activities.[27]

i. Offence of Harassment

Given that the proposed offence of harassment requires proof of two conjunctive elements – the purely objective test of knowledge of the pursuit of activities amounting to harassment as seen from the reasonable person perspective[28] and the subjective test of alarm and distress on the victims,[29] the author is of the opinion that this strikes proper balance between providing adequate safeguard to defendants through the requirement of unreasonableness of their conduct and protecting victims through criminalizing stalking behaviours. Hence, the author is of the opinion that the Hong Kong general offence of harassment remains silent as to the requirement of specific intent as opposed to the Scottish Model and the UK draft stalking bill. This is especially crucial when considering the effectiveness of the catch-all offence for harassment and stalking activities as delusional defendants who are unable to form an intent may be able to escape from liability.[30]

As aforementioned in ***section 2.b.***, the offence of threatening and abusive behaviour in the Scottish Model applies to both a single act and a course of conduct. The author is of the opinion that the only a course of conduct should be criminalized to prevent over-criminalization, the opening the floodgate of prosecutions and possibly infringing on fundamental human rights of people such as freedom to travel.

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[27] *See* n 9 above, p 26

[28] David C. Ormerod, *Smith and Hogan's Criminal Law* (New York, NY: Oxford University Press, 2008), p 701.

[29] Law Reform Commission of Hong Kong Privacy Sub-Committee, *Consultation Paper on Stalking* (Hong Kong: Printing Department, May 1998), para 3.3 and 3.6, p 19-21.

[30] Michael J. Allen, "Look Who's Stalking: Seeking a Solution to the Problem of Stalking" [1996] Web JCLI 1

With regards to the two novel recommendations, the author agrees that they be enacted as standalone offences as they address the legal loophole on multiple stalkers and victims in the current proposal which addresses issues that the government has long been attempting to regulate, such as triad society activities, debt collection practices[31] and harassment of company employees by radical activists' demonstrations. Any attempt to subsume these two offences under general harassment will subject the offence to further arbitrariness and present a potential infringement on the fundamental rights of Hong Kong people due to the lack of the additional requirement of intent. Even though the precedents relating in the UK seem to suggest that these provisions are not commonly invoked for protection against debt collectors[32] and are often viewed as being abused to clamp down the public opinions and demonstrations[33], the author believes that the benefit of criminalizing such conducts far outweighs the potential

ii. Offence of Stalking

In addition to the fallback provision of general harassment[34], it is suggested that a separate offence of stalking be introduced as an elevated offence to combat and prosecute the various and ever-changing forms of stalking behaviours.[35]

To conclude, in view of an imminent need for an effective piece of legislation criminalizing stalking and governmental desires in curbing other forms of common harassment problems in Hong Kong, it is recommended that Hong Kong adopt a two-level offence which involves (i) a general harassment offence and (ii) a specific stalking offence with heavier penalties, enhanced courts' powers to make orders and a non-exhaustive list of stalking behaviours and develop detailed provisions for the offence of collective harassment and harassment to deter lawful activities.

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[31] *See* Law Reform Commission of Hong Kong, *Report on the Regulation of Debt Collection Practices* (Hong Kong: Printing Department, July 2002)

[32] Ruth Harrison, "Harassment in Debt Claim" (1996) 60 J. Crim. L. 27-28.

[33] *See Huntingdon Life Sciences Ltd v Curtin* (1997) Times, 11 December; *Chambers and Edwards v DPP* [1995] Crim LR 896

[34] *See* n 9, p 26.

[35] Warren Chik, "Harassment through the Digital Medium: A Cross-Jurisdictional Comparative Analysis on the Law on Cyberstalking" (2008) 3 J. Int'l Com. L. & Tech. 39.

To stalking_consultation@cmab.gov.hk
cc
bcc
Subject 我就特區政府計劃把纏擾行為刑事化，表示強烈反對

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

27/03/2012 21:00

我就特區政府計劃把纏擾行為刑事化，表示強烈反對。我認為此項立法將嚴重損害香港的新聞採訪與集會抗議自由，並妨礙公民媒體的發展。

一) 香港沒有需要訂立《纏擾法》

1. 打擊新聞採訪自由

香港社會並沒有強烈的聲音要求刑事化纏擾行為，亦沒有一些嚴重的法庭案例出現，令社會覺得非立此法不可。這令我們非常擔心《纏擾法》的立場背景是要進一步收窄已經在不斷後退的新聞自由。事實上，這次立法，剛好又在副總理李克強訪港後，執法機關多番公然打壓新聞採訪的背景下提出。

諮詢文件特別引入英國同類型法案中「集體騷擾」一項，即多人纏擾同一對象一次即算犯罪。若多位記者追訪政治或公眾人物，社會議題時，集體採訪隨時變「集體纏擾」。

再加上，在諮詢文件上，對纏擾行為的定義，包括「注視或暗中監視受害人的居所或工作地點」、「在不受歡迎的情況下登門造訪」、「向第三者（包括社會）披露受害人的私隱」、「在街上尾隨受害人」、「對受害人作出虛假指控」或「謾罵」等，均與記者採訪和新聞言論自由相關，法例一旦通過，將來記者追查涉及公眾利益議題，如特首有沒有貪污、特首候選人有沒有行為失當或箝制言論自由等，會步步為艱、採訪時如履薄冰，定必損害新聞自由，不利媒體監察權貴，為公義和弱勢群體發聲。

2. 打擊示威抗議自由

除上述有礙新聞自由的定義外，纏擾行為還包括「送贈受害人不欲接受的禮物或古怪物件」和「阻礙合法活動」等，又由於「受騷擾」、「令人煩厭」的界定不清，法例將嚴重打擊示威抗議自由。譬如說，向欠薪老闆追討薪金當然會令到他們「受到困擾」，立法後打工仔如何去與老闆討公道？向高官送上示威物品、接二連三向特首詢問粟米石斑飯價錢會否變成「贈送不受歡迎物品」？菜園村和美孚新邨八期屋主保衛家園而阻止工程進行、雷曼苦主請願或佔領中環等行動會否變成「阻礙合法活動」？將來示威者以鏡頭紀錄警員有否濫權會否被告以纏擾？我深切憂慮條例將打壓社運、遊行集會的權利以及方式。

3. 纏擾會否包括網絡言論與表達

《纏擾法》的諮詢文件雖然沒有處理「網絡世界」的活動，但越來越多的現實世界的法例，都延伸至互聯網，當中包括「色情及淫褻物品檢控條例」、「違反公德行為」等，這令人擔心，網上的「虛假指控」或「謾罵」，以致目前網民的「惡搞」式表達方法，會否成為纏擾行為？我認為這項立法會對網絡上的言論自由造成巨大的威脅。

二) 不應把把纏擾行為定為刑事罪行

我認為目前大部份的纏擾行為，均能透過現有刑法，如「家暴條例」及民事訴訟解決，絕無必要另立為刑事罪行。

「刑事化」纏擾行為後，投訴者只需要表示感到困擾，便可以報警求助。低門檻的要

「刑事化」纏擾行為後，投訴者只需要表示感到困擾，便可以報警求助。低門檻的要求，大大減低投訴人的報案成本：政府代為檢控和執法，法庭訴訟開支全由公帑支付。這令投訴者和被投訴者處於極不公平位置，高官商賈反而不用一分一毫便能對付異見者及採訪媒體。若警方沒有計劃增加資源處理眾多的求助，在警力不足情況下，將來會否出現選擇性執法？可以預期，法例實施後容易否變成權貴高官打壓異議聲音和追蹤採訪的工具。

三）免責辯護難以保障公民權

有建議把「新聞採訪」等納入為免責辯護，然而免責辯護是要等案件進入法庭程序時作為抗辯理由，而檢控過程本身已阻礙了正常的採訪活動，而新聞機構亦要負擔昂貴的訴訟費。此外，「新聞採訪」的免責條款，難保障無償的公民採訪活動，結果變相會把公民新聞採訪活動刑事化。

我認為《纏擾法》將剝奪每一個公民的採訪、表達、遊行、示威抗議等權利，不應該展開立法程序。政制及內地事務局在行政長官換屆期間提出諮詢，又把諮詢期定在選舉月內，實屬不妥，局方終止立法程序。政府既然指出纏擾行為常出現於家庭或戀人關係，我們促請政府盡快修改家暴條例，加入纏擾行為刑事化，保障受虐人士，而不是捆綁式為纏擾行為立法，捨易取難

(寄件人要求不具名公開意見)

To stalking_consultation@cmab.gov.hk
cc
bcc

27/03/2012 21:27 Subject 反對制訂《纏擾法》意見書

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

致 政制及內地事務局：

一) 香港沒有需要訂立《纏擾法》

1. 打擊新聞採訪自由

香港社會並沒有強烈的聲音要求刑事化纏擾行為，亦沒有一些嚴重的法庭案例出現，令社會覺得非立此法不可。這令我們非常擔心《纏擾法》的立場背景是要進一步收窄已經在不斷後退的新聞自由。事實上，這次立法，剛好又在副總理李克強訪港後，執法機關多番公然打壓新聞採訪的背景下提出。

諮詢文件特別引入英國同類型法案中「集體騷擾」一項，即多人纏擾同一對象一次即算犯罪。若多位記者追訪政治或公眾人物，社會議題時，集體採訪隨時變「集體纏擾」。

再加上，在諮詢文件上，對纏擾行為的定義，包括「注視或暗中監視受害人的居所或工作地點」、「在不受歡迎的情況下登門造訪」、「向第三者（包括社會）披露受害人的私隱」、「在街上尾隨受害人」、「對受害人作出虛假指控」或「謾罵」等，均與記者採訪和新聞言論自由相關，法例一旦通過，將來記者追查涉及公眾利益議題，如特首有沒有貪污、特首候選人有沒有行為失當或箝制言論自由等，會步步為艱、採訪時如履薄冰，定必損害新聞自由，不利媒體監察權貴，為公義和弱勢群體發聲。

2. 打擊示威抗議自由

除上述有礙新聞自由的定義外，纏擾行為還包括「送贈受害人不欲接受的禮物或古怪物件」和「阻礙合法活動」等，又由於「受騷擾」、「令人煩厭」的界定不清，法例將嚴重打擊示威抗議自由。譬如說，向欠薪老闆追討薪金當然會令到他們「受到困擾」，立法後打工仔如何去與老闆討公道？向高官送上示威物品、接二連三向特首詢問粟米石斑飯價錢會否變成「贈送不受歡迎物品」？菜園村和美孚新邨八期屋主保衛家園而阻止工程進行、雷曼苦主請願或佔領中環等行動會否變成「阻礙合法活動」？將來示威者以鏡頭紀錄警員有否濫權會否被告以纏擾？本會深切憂慮條例將打壓社運、遊行集會的權利以及方式。

3. 纏擾會否包括網絡言論與表達

《纏擾法》的諮詢文件雖然沒有處理「網絡世界」的活動，但越來越多的現實世界的法例，都延伸至互聯網，當中包括「色情及淫褻物品檢控條例」、「違反公德行為」等，這令人擔心，網上的「虛假指控」或「謾罵」，以致目前網民的「惡搞」式表達方法，會否成為纏擾行為？本會認為這項立法會對網絡上的言論自由造成巨大的威脅。

二) 不應把把纏擾行為定為刑事罪行

本會認為目前大部份的纏擾行為，均能透過現有刑法，如「家暴條例」及民事訴訟解決，絕無必要另立為刑事罪行。

「刑事化」纏擾行為後，投訴者只需要表示感到困擾，便可以報警求助。低門檻的要求，大大減低投訴人的報案成本：政府代為檢控和執法，法庭訴訟開支全由公帑支付。這令投訴者

和被投訴者處於極不公平位置，高官商賈反而不用一分一毫便能對付異見者及採訪媒體。若警方沒有計劃增加資源處理眾多的求助，在警力不足情況下，將來會否出現選擇性執法？可以預期，法例實施後容易否變成權貴高官打壓異議聲音和追蹤採訪的工具。

三) 免責辯護難以保障公民權

有建議把「新聞採訪」等納入為免責辯護，然而免責辯護是要等案件進入法庭程序時作為抗辯理由，而檢控過程本身已阻礙了正常的採訪活動，而新聞機構亦要負擔昂貴的訴訟費。此外，「新聞採訪」的免責條款，難保障無償的公民採訪活動，結果變相會把公民新聞採訪活動刑事化。

本會認為《纏擾法》將剝奪每一個公民的採訪、表達、遊行、示威抗議等權利，不應該展開立法程序。政制及內地事務局在行政長官換屆期間提出諮詢，又把諮詢期定在選舉月內，實屬不妥，局方終止立法程序。政府既然指出纏擾行為常出現於家庭或戀人關係，我們促請政府盡快修改家暴條例，加入纏擾行為刑事化，保障受虐人士，而不是捆綁式為纏擾行為立法，捨易取難。

(寄件人要求以保密方式處理意見書)

(The sender requested confidentiality)

To stalking_consultation@cmab.gov.hk
cc
bcc
27/03/2012 21:56 Subject 有關立法禁止纏擾行為的意見
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

敬啟者：

本人認為立法禁止纏擾行為的原意雖好，但有關法例將嚴重影響新聞採訪自由，傳媒在此法例下難以發揮監察功用，公眾知情權因而被削減。故此，在有關新聞採訪問題上若未得到有效解決方法，政府不應為纏擾行為倉卒立法，建立不完善的社會制度。

市民
蔡崇茵

To stalking_consultation@cmab.gov.hk
cc
bcc
28/03/2012 00:15 Subject 就立法禁止纏擾行為之我見

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

敬啟者：

本人反對政府訂立《纏擾法》。原因如下：

1. 香港的現有警力已對纏擾行為有足夠阻嚇作用。

2. 諮詢文件上對纏擾行為的定義，包括「注視或暗中監視受害人的居所或工作地點」、「在不受歡迎的情況下登門造訪」、「向第三者（包括社會）披露受害人的私隱」、「在街上尾隨受害人」、「對受害人作出虛假指控」或「謾罵」等，均會損害新聞自由，阻礙媒體擔當社會上的「第四權」。

3. 雖有建議把「新聞採訪」納入「免責辯護」，然而免責辯護需等案件進入法庭程序時作為抗辯理由；檢控過程本身已阻礙了正常的採訪活動，新聞機構亦要負擔昂貴的訴訟費，同樣阻礙媒體擔當社會上的「第四權」。

4. 諮詢文件上對纏擾行為的定義，亦包括 「送贈受害人不欲接受的禮物或古怪物件」和「阻礙合法活動」等，將打擊港人示威抗議的自由。

希望政府正視以上意見，擱置訂立《纏擾法》。謝謝。

市民 何穎豪啟

To stalking_consultation@cmab.gov.hk
cc
bcc
28/03/2012 02:09 Subject 纏擾法

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

本人絕對反對將纏擾法立法, 記者採訪將受好大限制
被採訪者住住不喜歡被採訪而報警,記者每日將要被拉多少次?
而最近日置美容集團未經户客同意拍下事主裸照威脅及騙取他人信用咭轆下合共数十萬元

事主向傳媒被露事件後多間傳媒協助事主追訪該公司向苦主追問因由
以此以上事件若纏擾法立法後該美容集團以此法例報警拉記者在公眾眼中何以服眾
纏擾法立法後每日會有多小市民因爭拗以對方纏擾為由要求警方拉對方
每日警方要為此事出動多少次而疲於奔命, 每日需要多小警力應付

To stalking_consultation@cmab.gov.hk
cc
bcc
28/03/2012 05:45 Subject 反對制訂《纏擾法》之意見

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

香港沒有需要訂立《纏擾法》，政府不要進一步收窄已日漸倒退的自由環境!!

To stalking_consultation@cmab.gov.hk
cc
bcc
28/03/2012 08:20 Subject 有關立法禁止纏擾行為的意見

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

你好，

本人認為有需要為禁止纏擾行為立法，但不應基於法改會的建議中一些含糊不清的定義，例如，「騷擾」、「困擾」等等。而且，本人認為是次諮詢文件中，纏擾行為是包括所有關係，而非特指某種關係（情侶、金錢借貸等關係），如果真的實施了，會否對我們新聞自由或遊行集會自由造成障礙？雖然在文件中法改會建議向一些特定的行動提供免責權，但若果真的應用起來，一定會出現問題。例如，進行新聞採訪時，新聞從業員是先受到阻止，後來到法院才能證實自己的行為不是纏擾法，他們未必會被指控，但報告新聞重要消息的一刻也許會隨時間而流去，這有可能成為新聞自由的障礙，同樣地也有可能對遊行集會造成障礙。

所以，若果要立法禁止纏擾行為，必須訂明纏擾的定義、規劃在某種關係上及為新聞及遊行集會等列為豁免行為。

謝謝！

香港市民
陳俊裕　先生

To <stalking_consultation@cmab.gov.hk>
cc
bcc
Subject Consultation Paper on Stalking ("Paper")

28/03/2012 09:07

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

Dear Sir,

I attach my response in respect of the above Paper. And I have also faxed a copy.

Thank you.

Regards,
Vannetta Bertram-Grover
ID: (deleted)

Tel/Fax: (deleted)

Mobile: (deleted)

Comments In Response To The Government's Consultation Paper On Stalking .pdf

Attachments A and B.pdf

COMMENTS IN RESPONSE TO THE GOVERNMENT'S CONSULTATION PAPER ON STALKING

VANNETTA BERTRAM-GROVER
(deleted)
28 March 2012

NEED FOR LEGISLATION

1. Comments are invited on our proposal to legislate against stalking.

There is a time for everything. This includes a time to exercise one's right to remain silent, a time to exercise one's right to express one's self, and a time to exercise one's right to take action. This is the time for the Government of Hong Kong to take action and legislate against stalking in order to protect victims of stalkers and to prosecute stalkers in order to create a better society for everyone resulting in a better Hong Kong.

I wholeheartedly support and agree with the Government's proposal to legislate against stalking. In my view, stalking is a very serious problem and the issues arising from stalking need to be dealt with very seriously. It should not matter that the majority of Hong Kong people are not affected by stalkers to determine whether or not to introduce legislation because no one knows when a situation could arise whereby he or she becomes a victim of stalkers. Any person could become a victim at anytime without the victim even knowing the true reason. It is therefore critical to have in place safeguards so that victims of stalkers can see a clear and certain path to follow in order to seek redress and protection and bring perpetrators to justice.

I further welcome the proposal to introduce the offences of collective harassment and harassment to deter lawful activities. The extreme lack of empathy that can be shown by some members of the public at large towards victims of collective harassment is disappointing to say the least and is itself a source of distress to victims. The legislation would go some way in educating people as to the seriousness of the issues involved and should not be taken lightly.

In an age of powerful tools of communication such as the internet, social media sites such as Facebook and Twitter and general ease of communication amongst people, it is very easy for individuals to organise themselves into a single group or any number of groups with the sole purpose of causing harm, fear, distress or total destruction of the victim's way of life.

Lack of more than circumstantial evidence makes a credible complaint hard to sustain no matter how real the harassment is. Collective harassment exacerbates this obstacle since the activity is by definition spread amongst many harassers.

The Government of Hong Kong should refer to the tough position taken by laws of Scotland and introduce stalking as a criminal offence.

The Criminal Justice and Licensing (Scotland) Act 2010 was passed on 30th June 2010 and came into effect on 13th December 2010. Section 39 of this Act makes stalking a criminal offence and its provisions are similar to those proposed in the Consultation Paper in respect of the offence of harassment.

After the specific offence of stalking was introduced in Scotland, I understand from a report in the The Guardian Newspaper (attached at A) that "...the change in the law has led to 400 alleged stalkers being prosecuted in the first 11 months of 2011 compared with just 70 in the whole of the previous 10 years under the UK-wide 1997 Protection from Harassment Act".

Recently in the UK, a parliamentary inquiry found that the law on harassment and stalking under the 1997 Protection from Harassment Act is not "fit for purpose". On the 8th March 2012 the British Prime Minister, David Cameron announced that two new specific criminal offences of stalking will be introduced in England and Wales. The new offences of stalking and stalking where there is a fear of violence will be created to sit alongside existing offences of harassment in the Protection of Harassment Act 1997.

All the considerations raised in paragraphs 2.11 to 2.17 of the Consultation Paper are valid and I strongly urge the Government of Hong Kong to take a robust stance to support victims of stalkers by introducing the legislation so that the police and the courts can be more effective in deterring and punishing offenders.

2. OFFENCE OF HARASSMENT

2(a) Comments are invited on whether stalking should be made a criminal offence based on:

(i) A person who pursues a course of conduct which amounts to harassment of another; and which he knows or ought to know amounts to harassment of the other, should be guilty of a criminal offence

The harm the stalker causes emanates from his repeated obnoxious and abhorrent behaviour over a period of time. The victim may choose to ignore an isolated behaviour but where it persists it becomes threatening and distressing. It may be as minor as a stalker selecting a song at an opportune and timed moment repeatedly over a long period of time with the words: *"I am about to turn up the heat...it's going to get worse for you"*...or *"...there will be violence"*. To the untrained ear/innocent bystander, the words may be meaningless but from the perspective of the victim in accumulation with many other factors, they contain words of implied threats of psychological and physical violence.

The stalker, through his repetitive conduct effectively intimidates the victim without being seen to commit an offence.

I agree that the legislation should not contain an exhaustive list of incidents nor be time barred in order to achieve flexibility.

(ii) For the purposes of this offence, harassment should be serious enough to cause that person alarm or distress

I agree that it is not necessary to define the term "Harassment" and I agree with the considerations raised by the LRC under paragraph 3.8: "...criminalising harassment without specifying a list of prohibited activities would help ensure that all kinds of activities that cause harassment can be caught." The police and law enforcement authorities should be given as wide a scope as possible to prosecute and convict offenders. Even behaviour which of itself may be innocuous may become harassment if the victim is conditioned by repetition or context to find it so.

Ordinary people understand that the harm suffered could be psychological or physical or both. I agree that the terms "alarm" and "distress" evoke the emotional impact of harassment to the victim. I agree that they are widely and easily understood so no definition is necessary. It should be left to the court to decide on the basis of all the circumstances of the case.

(iii) **A person ought to know that his course of conduct amounts to harassment of another if a reasonable person in possession of the same information would think that the course of conduct amounted to harassment of the other.**

In some cases, the emotional abuse of the victim in the long run may lead the victim to commit suicide (which would be the intention of the stalker) even though a stronger victim may be able to endure the harassment. Therefore, the perception of the conscience of the reasonable man would be the appropriate test.

2(b) Whether collective harassment and harassment to deter lawful activities should be made offences.

(i) COLLECTIVE HARASSMENT

The Consultation Paper paints the picture: *"...it may be more common to see a group of people acting together to harass another, where each one of the perpetrators only undertakes one act of harassment"*. And the UK legislation reflects the serious considerations involved in a campaign of harassment as mentioned in paragraph 3.14 of the Consultation Paper: *"This plugs the loophole where the stalker could not be alleged to have pursued a "course of action" if he acts only once personally and then arranges for other people to commit numerous other stalking acts on the victim"*. It is my view, that a victim might be harassed by a single individual, for example, the perpetrator touching the victim inappropriately and then over years persists with harassment either directly or indirectly through individual or organised groups and throughout all the campaign of harassment feign personal innocence.

The Consultation Paper states: *"It is for consideration whether a provision should be included in the proposed anti-stalking legislation...to protect an individual from collective harassment by two or more people who undertake only one act of harassment."* (Paragraph 3.16)

From the victim's perspective other terms synonymous with the term collective harassment and which convey the potentially terrifying nature of the harassment includes: "Gang Stalking", (similar to mafia groups), "Multiple Stalking", "Community Stalking and "Organised Stalking".

Collective harassment is a problem. A victim of collective harassment needs support from the government by showing its commitment to zero tolerance to collective harassment in all its forms.

Collective harassment is harmful and dangerous to the victim and harmful and dangerous to the wider community. Collective harassment is real and collective harassment exists in Hong Kong and should be rooted out. It is of vital importance that the offence of collective harassment becomes law.

Collective harassment could be seen as a collection of stalkers acting in concert to destroy the victim. They could exist in just one group or many groups interconnecting to harass the victim. A member of the group might perform an isolated act but such a member may also have carried out a course of conduct causing alarm and distress to the victim.

In short, collective harassment may take the form of mob psychological "violence" with people joining in out of herd instinct without any knowledge or stake in the issue which triggered or motivated the initial harassment. They join in simply to be part of the group in the same way that bullying often results in fostering an environment in which other people feel that they can get away with bad behaviour towards the victim because not only is there no social sanction but there is social support.

It is behaviour which demands serious consideration and which is critically important to introduce as an offence because it not only affects the individual victim but also potentially spreads disharmony throughout a community and beyond.

As mentioned previously, the powerful medium of the internet, social networking sites such as Facebook and Twitter provide fast communication which members of a group can easily convey relevant information (eg, exact location, victim's activity, who victim is talking to, content of victim's conversation) so as to quickly formulate a plan, organise and galvanise to attack the victim – psychologically or physically.

The very nature of collective harassment is such that for the victim it is a state of perpetual motion. A significant number of people are involved playing a role and the harassment never ends.

In addition to outright hostility and belligerent/intimidating behaviour (whether physical or verbal), harassment/collective harassment may take many other forms designed to assert psychological pressure. Examples include:

- repeated physical obstruction without actual contact,
- inappropriately close physical proximity rushing towards victim or violent gestures without actual contact,
- messages of violence conveyed via the medium of songs which include lyrics of that nature,
- mischief making, intended to provoke the victim to anger,
- acting out violent dramas amongst harassers to convey an intimidating message to the victim,
- conversations with third parties (including children) in earshot of the victim intended to convey a message to the victim,
- gestures/body language intended to convey aggression/contempt (holding of nose, sniffing, coughing, hissing, jeering, pretending to vomit, pretending to stab in the back, monkey like gestures etc.),
- the adoption of symbols/gestures/catch phrases intended to show solidarity amongst the collective harassers (e.g, the adoption of a colour akin to a 'uniform') and thus to assert further psychological pressure on the victim,

- as an alternative tactic sporadically utilized, the adoption of vastly exaggerated feigned over politeness which is in fact intended to convey hostility,
- following victim and making notes of victim's activities,
- mimicking victim's actions,
- repeated 'accidental' bumping into the victim in seemingly innocuous circumstances such as a swimming pool,
- 'accidental' spilling of liquids upon the victim,
- ritualistic chants (eg, "go home!" or "don't come back!" or "take a high jump!"),
- repetition of phrases/gestures used to condition the victim to associate certain such behaviour with the collective harassment campaign and thus to leverage relatively minor harassment into more powerful psychological harassment.

(ii) HARASSMENT TO DETER LAWFUL ACTIVITIES

I am of the view that the proposed offence of harassment to deter lawful activities should be made a criminal offence. It is not necessary for this offence to be specific in relation to a company and pressure groups as in the UK. The offence should be interpreted widely to cover any lawful activities where stalkers persecute their victims so that they are distressed and alarmed and afraid of carrying out their preferred activities and afraid of living their lives. Everyone has the freedom of choice and victims should not be harassed into acting in a way they are not comfortable with. A campaign of harassment by a significant sector of a community against a single victim is absolutely outrageous and should be rooted out by any lawful means possible.

An offence to deter lawful activities could take place anywhere including social settings and community facilities. All the collective harassment tactics described above could be utilized by stalkers to harass in order to deter lawful activities. In such cases, the feeling of the victim is that they are being harassed whilst engaging in everyday lawful activities such as going to the supermarkets, using a social club, gym or a sports facility such as a swimming pool or sauna. In such a situation stalkers behave as though they have absolute authority over the victim and that the victim should have no right in determining the scope of their life. Such a mindset of stalkers is totally unacceptable.

Hong Kong is a free society with the rule of law. No one or group of people should use mob dictatorship to restrict the freedoms and rights of others.

PENALTY

3(a) Whether a single maximum penalty level for the proposed offence of harassment should be provided, irrespective of whether the offender knew or ought to have known that the conduct amounted to harassment.

It is very easy for a stalker to harass his victim and then claim ignorance that his conduct amounted to harassment. The state of minder of a stalker is very manipulative and deceitful. It would be on the prosecutor to prove that the stalker "knew" which in my view leans too heavily in favour of the stalker. There should be no distinction between "ought to know" and a stalker who commits the offence "knowingly". I would therefore support the argument that a single maximum penalty level for the proposed offence of harassment should be provided irrespective of whether the offender knew or ought to have known that the conduct amounted to harassment. This should give a very clear signal to stalkers that under no circumstances will harassers be tolerated.

I agree with the reasoning set out in paragraph 3.29 that the appropriate penalty should be left for the court to decide taking into account all the circumstances of the case. This discretion will provide sufficient flexibility.

3(b) Whether the maximum penalty for the proposed offence of harassment should be set at a fine at Level 6 ($100,000) and imprisonment for two years.

In my view, I would support the argument that the maximum fine should be set at Level 6 ($100,000). In consideration that the stalker could be a man of straw, however, I would place the emphasis on the maximum term of imprisonment. The suggested maximum term of two years is far too lenient. A maximum penalty of five years would be a stronger deterrent in order to "reflect the seriousness of the proposed offence and to provide a greater deterrent effect in view of the distress that may be caused to the victims".

3(c) Whether the maximum penalty for the offences of collective harassment and harassment to deter lawful activities should be set at the same level as in (b) above.

In my view, the proposed offences of collective harassment and harassment to deter lawful activities should be subject to a greater penalty because of the "magnitude of potential alarm and distress caused by these types of harassment" and the cancerous nature of the disharmony and even hate incited within a community.

In this situation the maximum fine could remain at Level 6 ($100,000) but again the emphasis placed on the maximum term of imprisonment. In my view, in respect of the proposed offences of collective harassment and harassment to deter lawful activities, the maximum term of imprisonment should be 7 Years.

3(d) Whether the limitation period for institution of court proceedings should be specified as two years from the time when the actions taken by the stalker constituted a course of action and the cumulative effect of these actions was such that the victim was alarmed or put in a state of distress.

As indicated by the LRC, it could take many years to identify the stalker. And in particular cases of collective harassment, the process of collecting evidence and identifying the victim might be even more complicated. I would therefore suggest that two years is not sufficient and that a limitation period of 6 years to institute court proceedings should be specified.

DEFENCES

(a) Whether the following defences proposed by the LRC for the offence of harassment, if pursued, should be provided:

(i) The conduct was pursued for the purpose of preventing or detecting a crime.

I would agree with the availability of this defence. However, it is extremely important that such a defence is proven by clear evidence that the course of conduct was reasonable and that in the circumstances there was a high probability of a crime being committed or detected. I am concerned about situations where the defendant's course of conduct is strongly influenced by his negative state of mind – reflecting stereotypical views, prejudices and bigotry about a particular person because of their ethnicity, race, colour or other forms of discrimination. For example, a victim may be harassed by being followed and monitored because in the mind of the stalker the victim's ethnicity means that they are or can be characterized as a criminal. In such a situation, the defence should not be available to the defendant stalker. In effect, the defendant was simply harassing the victim based on their own prejudice without any justification.

A tragic example of this is the recent shooting dead of an unarmed teenager Trayvon Martin in Florida, USA by a neighbourhood watchman claiming self defence. (See copy BBC report attached at **B.**)

(ii) The conduct was pursued under lawful authority.

I agree with this defence, but as drafted I do think it is rather vague. What is "lawful authority"? It could be interpreted widely to mean a manager in the course of employment instructing a subordinate to do something which could amount to a course of conduct leading to harassment of another person. In my view, this proposed defence should be drafted more specifically as under section 1(3)(b) of the Protection from Harassment Act 1997 *"..the course of conduct was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment"*

(iii) **The pursuit of the course of conduct was reasonable in the particular circumstances.**

I agree with a defence based on reasonableness in order to provide flexibility. In considering all the circumstances of the case, the defendant must show strong and clear evidence that such a course of conduct was legitimate and reasonable.

(b) Whether a defence for news-gathering activities should be subsumed under the "reasonable pursuit" defence ....as recommended by the LRC, or a separate, specific defence for news- gathering activities should be provided for the offence of harassment, if pursued.

I agree with the considerations raised by the LRC and agree that a defence for news-gathering should not be separate but subsumed under "reasonable pursuit".

(c) If a specific defence for news-gathering activities should be provided, how the defence, whether qualified or not, should be framed.

Not Applicable.

(d) Whether any other defences should be provided for the offence of harassment, if pursued.

The proposed defences already mentioned for the offence of harassment are sufficient. There should be no more defences.

(e) Whether, and if so what, defences should be provided for the offences of collective harassment and harassment to deter lawful activities, if pursued.

The very nature of collective harassment and harassment to deter lawful activities (involving more than one person) is such as to remove any justification for them under the very wide ground of reasonableness. If we consider each defence proposed under the offence of harassment as stated above and apply them to collective harassment and harassment to deter lawful activities it becomes clearly evident that the course of conduct lacks legitimacy because of its excessive nature. It is therefore totally unreasonable. Furthermore, it is not clear how the proposed offence of "harassment to deter lawful activities" can be subject to a defence of "pursued under lawful authority". (Emphasis added.)

Accordingly, in my view, there should be no defences applicable to the proposed offences of collective harassment and harassment to deter lawful activities.

RESTRAINING ORDERS IN CRIMINAL PROCEEDINGS

5(a) Whether or not a court sentencing a person convicted of the offence of harassment, if pursued, should be empowered to make a restraining order prohibiting him from doing anything which causes alarm or distress to the victim of the offence or any person as the court thinks fit.

I agree that maximum protection should be given to the victim. I therefore agree with the views of the LRC and the considerations mentioned under paragraph 3.60 of the Consultation Paper.

(b)(i) If so: whether the restraining order may be made in addition to a sentence imposed on the defendant convicted of the offence of harassment, a probation order or an order discharging him absolutely or conditionally.

Again, maximum protection to the victim should be given and the court should have a very wide power towards that end.

(b)(ii) Whether the duration of the order has to be specified or the order may have effect for a specified period or until further notice.

The maximum protection to the victim should be primary consideration. Stalkers have no consideration for the rights and freedom of others. Their objective - particularly shown in collective harassment and harassment to deter lawful activities cases - is to prevent the victim exercising their rights and freedoms and thereby destroying the victim's quality of life or potentially in extreme cases even leading to suicide.

In my view, there should not be a specifed duration for a restraining order; it should not be specified but left open - until further notice. The LRC's comment shows how the balance could be struck: *"a restraining order would only prohibit defendants from doing anything which causes alarm or distress to the victims or others, and would not affect the other rights and freedoms of the defendants."*

Further, if pursued, the paragraph below as regards the variation of the order respects the human rights of the defendant. That in itself, is sufficient balance between protection of the victim and rights and freedoms of the defendant.

(b)(iii) Whether the prosecutor, the defendant or any other person mentioned in the restraining order should be allowed to apply to the court for it to be varied or discharged.

I agree with the reasoning set out in paragraph 3.66 of the Consultation Paper. The defendants and any other person mentioned in the order, should be allowed to apply for the order to be varied or discharged.

(b)(iv) Whether the maximum penalty for breaching a restraining order should be set at the same level as that proposed for the offence of harassment (i.e a fine at Level 6 ($100,000) and imprisonment for two years).

In many circumstances, breach of a restraining order may itself amount to or be a precursor to further offences of harassment. The breach may therefore be no less serious than the original offence.

In my view, the proposed offence of harassment should carry a maximum term of imprisonment of 5 years and the proposed offences of collective harassment and harassment to deter lawful activities should carry a maximum term of 7 years. I would therefore propose that the maximum penalty for breaching a restraining order should be set at the same level as I have proposed for the offence of harassment, collective harassment and harassment to deter lawful activities. It is always within the power of the court to impose a sentence which is less than the maximum in appropriate circumstances.

CIVIL REMEDIES FOR VICTIMS

6(a) Whether a person who pursued a course of conduct which amounted to harassment serious enough to cause alarm or distress of another should be liable in tort to the object of the pursuit.

I absolutely support the proposal that a distinct tort of harassment should be created. For all the reasons stated by the LRC and the considerations raised in the Consultation Paper I would agree with this recommendation.

(b) The plaintiff in an action for harassment should be able to claim damages for any distress, anxiety and financial loss resulting from the pursuit and to apply for an injunction to prohibit the defendant from doing anything which causes the plaintiff alarm or distress.

This proposed relief gives more power and flexibility to the plaintiff and I would support this provision.

ENFORCEMENT OF INJUNCTIONS

7 (a) Whether the following LRC recommendations should be taken forward:

(i) Where a civil court grants an injunction in an action for harassment, it should have the power to attach a power of arrest to the injunction.

For the reasons stated in the Consultation Paper, I agree with the above proposal.

(ii) A police officer should be able to arrest without warrant any person whom he reasonably suspects to be in breach of an injunction to which a power of arrest is attached.

I agree with the above proposal.

(iii) The court dealing with the breach should have the power to remand the defendant in custody or release him on bail.

I agree with the above proposal.

(iv) Where the court has not attached a power of arrest to the injunction, the plaintiff should be able to apply to the court for the issue of a warrant for the arrest of the defendant if the plaintiff considers that the defendant has done anything which he is prohibited from doing by the injunction; and

(v) if the defendant is arrested under such a warrant, the court dealing with the breach should have the power to remand him in custody or release him on bail.

For the reasons stated in the Consultation Paper, I would agree with paragraphs (iv) and (v) above.

7(b) Our view that a breach of a civil injunction should not be made a criminal offence.

I would support Hong Kong's position that a breach of a civil injunction should not be made a criminal offence.

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theguardian

Police failing to take stalking complaints seriously, inquiry finds

Parliamentary inquiry says laws on harassment and stalking are not 'fit for purpose' and are in need of fundamental reform

Alan Travis, home affairs editor
The Guardian, Tuesday 7 February 2012

The British Crime Survey in 2006 estimated that up to 120,000 people were victims of stalking in any one year. Photograph: Alamy/Robin Beckham @ Beepstock

The police and criminal justice system provides protection to the rich and famous from stalkers but fails to take complaints from the public seriously, according to the results of an independent inquiry published on Tuesday.

The parliamentary inquiry set up by a cross-party group of MPs, chaired by Plaid Cymru's Elfyn Llwyd, finds that the laws on harassment and stalking are not "fit for purpose" 15 years after they reached the statute book, and are in need of fundamental reform.

The inquiry, which took evidence from victims, the police, magistrates, lawyers and probation staff, heard that many victims of stalking have little confidence in the criminal justice system and many felt their complaints were not taken seriously by the police.

In the rare event that stalking allegations are pursued by the Crown Prosecution Service, plea-bargaining is prevalent, often leading to light sentences with prison terms of more than six months a rarity.

The report, by the justice unions' parliamentary group and backed by 120 MPs and peers, discloses that the decision to create a specific criminal offence of stalking in Scotland in 2010 has already had a dramatic impact.

It says the change in the law has led to 400 alleged stalkers being prosecuted in the first 11 months of 2011 compared with just 70 in the whole of the previous 10 years under the UK-wide 1997 Protection from

Harassment Act. The inquiry found that in England the 1997 legislation was used more often to prosecute neighbours arguing about garden hedges and only rarely to deal with stalking.

David Cameron, whose brother, Alexander, recently complained to the police about a stalker, has admitted there is a gap in the law and strongly hinted he wants to see a new specific offence created.

The home secretary, Theresa May, has long campaigned on the issue after she took up a constituency case of a mother whose daughter was murdered by a stalker after complaining to the police. A Home Office consultation on whether a specific criminal offence should be created in England and Wales closed on Monday.

A Home Office spokesperson said: "It is vital that victims of stalking get the support they need from the police and the courts and that offenders are properly punished. That's why we have been consulting the public on a specific offence of stalking and the need for better training and guidance for the police and Crown Prosecution Service. That consultation only closed yesterday and we need to carefully consider all responses before we act to ensure we get this right."

But the report from the independent parliamentary inquiry says they need to go further and ensure the public are given the kind of "Rolls-Royce" protection afforded to royalty, politicians and other key public figures by the Metropolitan police's fixated threat assessment centre.

The unit, which was set up in 2006, combines police and psychiatric expertise, and acknowledges that many people who "stalk" prominent public figures are severely and acutely mentally ill.

It combines specialist psychiatric risk assessments with treatment plans, and when its methods were put into general use the Met they reported a 58% reduction in domestic murders, serious incidents and repeat victimisation.

Laura Richards of the Protection against Stalking pressure group told the inquiry that some forces were scaling down or even abandoning the use of such screening programmes and were taking a step backwards by restoring officers' discretion.

Harry Fletcher of Napo, the probation union, who was an adviser to the inquiry, said: "What you have is the 'fixated threat assessment centre' set up by the Met in 2006 to protect the rich and famous but the thousands of ordinary people do not get anything. In their cases there is no risk assessment and they are not taken seriously by the police and the perpetrators are not tested and so continue with their obsessive behaviour."

He added that too often the police did not recognise that there was a pattern of abuse and harassment and dealt with each individual incident alone.

The British Crime Survey in 2006 estimated that up to 120,000 people were victims of stalking in any one year.

B 80292

BBC NEWS

US & CANADA

23 March 2012 Last updated at 18:28 GMT

Trayvon Martin: Obama says teenager's death a tragedy

US President Barack Obama has said the "tragedy" of an unarmed black teenager shot dead in Florida should prompt some national soul-searching.

The death of Trayvon Martin, 17, gunned down by a neighbourhood watchman, who was not charged as he claimed self-defence, has sparked outrage.

"If I had a son he would look like Trayvon," President Obama told reporters at the White House.

Rallies have been held this week in Florida and New York to demand justice.

"I can only imagine what these parents are going through and when I think about this boy I think about my own kids," Mr Obama said on Friday.

"I think they are right to expect that all of us as Americans take this with the seriousness that it deserves and we're going to get to the bottom of what happened.

"Every parent in America should be able to understand why it is absolutely imperative that we investigate every aspect of this and everybody pulls together, federal state and local, to figure out exactly how this tragedy happened," he added.

President Obama's remarks were echoed by Republican White House hopefuls who spoke out later on Friday about the case.

Former Massachusetts Governor Mitt Romney said in a statement: "What happened to Trayvon Martin is a tragedy. There needs to be a thorough investigation that reassures the public that justice is carried out with impartiality and integrity."

His rival, former Pennsylvania Senator Rick Santorum, called the shooting a "horrible case" and disputed whether Mr Zimmerman deserved protection under the state's self-defence law.

"Stand your ground is not doing what this man did," he said.

In Florida, a law known as "stand your ground" can prevent criminal or civil prosecution when deadly force is used in self-defence.

Grand jury

There have been mounting calls for the arrest of George Zimmerman, 28, who opened fire on the teenager on 26 February in the Orlando suburb of Sanford.

A grand jury is considering whether to charge Mr Zimmerman and will hear evidence on the case on 10 April.

The Department of Justice and FBI have launched a civil rights investigation into the conduct of the local police department.

Mr Martin was carrying a bag of sweets and a can of iced tea when he was approached by Mr Zimmerman.

The neighbourhood watchman had told a police dispatcher he thought Mr Martin looked suspicious.

It was raining and the teenager had his jacket hood pulled over his head. Mr Zimmerman shot Mr Martin following a confrontation.

The Florida politician behind the state's 2005 "stand your ground" law has said in an opinion piece for Fox News that he did not believe the rule was applicable in the case of Mr Martin.

The law "does not provide protection to individuals who seek to pursue and confront others, as is allegedly the case in the Trayvon Martin tragedy in Sanford", said Republican State Representative Dennis Baxley.

On Thursday, Florida Governor Rick Scott appointed a new prosecutor to handle the case.

He also established a task force led by the state's lieutenant governor, an African-American woman, to conduct hearings on the incident and recommend any changes to state law.

Hours earlier, Sanford Police Chief Bill Lee temporarily stepped down in a bid to defuse building anger that his department had not arrested Mr Zimmerman.

Thousands of people gathered at a rally in Sanford on Thursday evening led by the civil rights leader Al Sharpton demanding an arrest over the 17-year-old's shooting.

More than 1.5 million signatures have been gathered for an online petition calling for justice for Mr Martin.

Mr Obama, the first US African-American president, has largely steered clear of race issues since his much-criticised intervention in the controversial 2009 arrest of a black Harvard University professor.

The president said police had "acted stupidly" in detaining the academic as a suspected burglar, but later added it would have been preferable if he expressed his concerns in different terms.

To stalking_consultation@cmab.gov.hk
cc
bcc
28/03/2012 10:11 Subject 纏擾法諮詢

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Subject Response to invitation of comment to the proposed stalking law

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Dear Sirs,

Attached please find my submission for the captioned consultation.

Cheers,
Alessandro Tsang

Submission on stalking law.docx

This can be illustrated in the case of *R v C*[7] where the court, acknowledging the need to protect the victims, had refused to take into account the defendant's mental illness in assessing whether a reasonable person would consider his conduct amounts to harassment.

However, despite the need to offer protection, it remains a serious doubt as to whether persons without a culpable state of mind should be prosecuted. In R v G[8], although in the context of criminal damage, Lord Bingham considered that it is not blameworthy to do something that involves the risk of injury to another if one does not perceive that risk[9]. Moreover, in Hong Kong, the problem of stalking is not very prevalent and often the result is that only annoyance or inconveniences are caused, therefore it is uncertain as to whether the protection offered is proportional to the seriousness of the problem, especially where lawful activities, such as a hot pursuit of love, is at risk of being criminalized.

Moreover, the Protection from Harassment Act itself does not only create a criminal offence but also a statutory tort[10]. Acknowledging the tort of negligence is reluctant to award damages for psychiatric as opposed to physical injury, it has been suggested that the Parliament requires that stalkers 'knows or ought to know' that the conduct amounts to harassment because whether the perpetrator 'ought to know' is determined by reference to what a reasonable person would know, therefore showing affinity to current law on negligence[11]. Therefore, what can be said about the Act is that, for section 1, the true motive is to create a tort and the extension of criminal offence was only a secondary purpose. What is truly criminal lies in section 4 of the Act which, despite the 'know or ought to know' element and its determination are the same as those contained in section 1[12], a more serious from of harassment that the conduct must cause fear of violence is required.

Broad actus reus to be coupled with stricter mens rea

The second reason for requiring the prosecution to prove subjective intention to harass is that a subjective mens rea requirement is necessary to narrow down the scope of the offence. This is because, in the Consultation Paper, the LRC considered it unnecessary to define harassment so as to ensure all kinds of activities that cause

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[7] *R v C* [2001] EWCA Crim 1251

[8] *R v G* [2004] 1 AC 1034

[9] *R v G* [2004] 1 AC 1034 at para 32 *'First, it is a salutary principle that conviction of serious crime should depend on proof not simply that the defendant caused (by act or omission) an injurious result to another but that his state of mind when so acting was culpable. This, after all, is the meaning of the familiar rule actus non facit reum nisi mens sit rea. The most obviously culpable state of mind is no doubt an intention to cause the injurious result, but knowing disregard of an appreciated and unacceptable risk of causing an injurious result or a deliberate closing of the mind to such risk would be readily accepted as culpable also. It is clearly blameworthy to take an obvious and significant risk of causing injury to another. But it is not clearly blameworthy to do something involving a risk of injury to another if (for reasons other than self-induced intoxication: R v Majewski [1977] AC 443) one genuinely does not perceive the risk. Such a person may fairly be accused of stupidity or lack of imagination, but neither of those failings should expose him to conviction of serious crime or the risk of punishment.'*

[10] Protection from Harassment Act s. 3 (1)

[11] Brenda Barrett, *When Does Harassment Warrant Redress?* Ind Law J (2010) 39 (2): 194 at p.4

[12] Protection from Harassment Act s. 4 (1), s. 4 (2)

Submission to the Hong Kong Special Administrative Region Government regarding the proposed offence of harassment recommended in the Consultation Paper On Stalking

Introduction

The Law Reform Commission (LRC), in the Consultation Paper On Stalking, proposed an offence of stalking which largely resembles the Protection From Harassment Act in United Kingdom. In the Consultation Paper it was recommended that intention to harass should not be included as an element of the proposed offence of stalking[1]. According to their recommendation, if a defendant's conduct can be objectively considered as stalking[2], then, even if he/she did not intent to harass or know that his/her conduct amounts to harassment, he/she will be found guilty.

From a criminal law perspective, the proposed offence is drafted too widely that it does not require defendants to subjectively intend to harass the victim. In other words, by using an objective test as a proxy of proving mens rea, problems are bound to arise.

Criminality

The first reason is that, by removing such requirement, the proposed offence might convict persons whose minds lack culpability. The LRC seeks to justify in terms of adequacy of protection offered to potential victims. To completely shield victims from harassment, it is suggested that stalkers, including those who are delusional, reckless or not capable of realizing as to whether their victims were harassed as a result of their pursuits, should be caught under the section[3].

The proposed offence is largely a replica of the Protection From Harassment Act. Under the Act, a person will be found guilty if he/she pursues a course of conduct which amounts to harassment of another, and which/he/she ought to know amounts to harassment of the other[4]. The same reasonable person test, as stated in para 3.22 (a) (iii)[5], is used to decide on whether a person ought to know his/her conduct amounts to harassment. This objective requirement was deemed necessary to ensure that there was comprehensive protection of all stalking victims and that stalkers whose mental illness precluded them from appreciating the impact of their conduct were not excluded from the scope of the legislation[6].

What emerges from this objective assessment is that there is no distinction between the liability of a stalker who has thoughtlessly disregarded the possibility that his attentions may be unwelcome to the object of his affections and the stalker who is inherently incapable, due to mental illness, of appreciating the impact of his conduct.

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[1] The Government of the Hong Kong Special Administrative Region, *Consultation Paper on Stalking* December 2011 at para 3.6

[2] The Government of the Hong Kong Special Administrative Region, *Consultation Paper on Stalking* December 2011 at para 3.22 (a) (iii) *'A person ought to know that his conduct amounts to harassment of another if a reasonable person in possession of the same information would think that the course of conduct amounted to harassment of the other'*

[3] nl

[4] Protection from Harassment Act s. 1 (1), s. 2 (1)

[5] Protection from Harassment Act s. 1 (2)

[6] Emily Finch, *Stalking the perfect stalking law: an evaluation of the efficacy of the Protection from Harassment Act 1997* 2002 Crim. L. R. 703 at p.710

harassment could be caught[13]. It is clear that, having adopted the view of the LRC, harassment can mean anything, ranging from chit-chatting to using a weapon to threaten the victim. It is understandable that the term 'harassment' should not be defined narrowly because potentially all sorts of behavior could cause harassment. However, since this offence is closely related to citizen's daily lives, they are entitled to know the offence with specificity so that they know where they stand[14]. If, in any allegation of harassment, their conduct is to be judged by a 'reasonable person', legal certainty would be lacking and over-deterrence is likely to result.

In addition, with a widely defined and easily satisfied actus reus, it is plainly unreasonable to further leave an important issue which is relevant in determining guilt to the subjectivity of judges. This is because, if there is no requirement of proving specific intent, a person may be found guilty for his unobjectionable conduct solely due to the subjectivity of judges and hypersensitivity of the victim.

To illustrate, suppose a couple engaged in arguments with each other and the wife refused to pick up calls from the husband. The husband, fearing that something bad had happened to his wife, called her 10 times during the night of which as a result caused the wife alarm. Under the current proposal, 10 calls during the night may, in borderline cases, be considered as harassment, thus consequently the only way to escape liability is to convince the court that he did not know his conduct amounted to harassment. However, even if the husband in fact did not know his conduct amounted to harassment of his wife, there is a risk that he may be convicted because the judge, owning to his moral or social values, considers the conduct in question amounted to harassment[15], that the husband ought to know that his conduct amounted to harassment of another. The proposed defence would not assist him because the judge, having considered his conduct amounted to harassment, would not recognize that the pursuit of that conduct was reasonable in the particular circumstances[16].

Also, unlike the current proposal, other jurisdictions usually define stalking and require proof of subjective intention to stalk. For instance, in Ireland harassment is defined to arise only in a number of ways[17] and proof of intention to harass is required[18]; in South Australia[19], Australian Capital Territory[20], Canada[21] and most of the states in the United States[22], stalking is specifically defined and specific intent is required; in Queensland, although there is no requirement to prove specific intent to stalk[23], unlawful stalking is broadly defined[24]. The purpose behind is well explained

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[13] The Government of the Hong Kong Special Administrative Region, *Consultation Paper on Stalking* December 2011 at para 3.4, 3.8
[14] Alec Samuels, *Stalking Defined* (1997) Statute Law Review Vol. 18 No.3 at p.247
[15] Alec Samuels, *Stalking Defined* (1997) Statute Law Review Vol. 18 No.3 at p.246
[16] The Government of the Hong Kong Special Administrative Region, *Consultation Paper on Stalking* December 2011 at para 3.55 (a) (iii)
[17] Non-Fatal Offences Against the Person Act s. 10 (1)
[18] Non-Fatal Offences Against the Person Act s. 10 (2) (a)
[19] Criminal Law Consolidation Act 1935 s. 19AA (1) (a), (1) (b) (i)
[20] Crimes Act 1900 s. 35 (1), 35 (2)
[21] Criminal Code s. 264 (1), 264 (2)
[22] Neal Miller and Hugh Nugent, *Stalking Laws and Implementation Practices - A National Review for Policymakers and Practitioners (Full Report)*, available at http://www.mincava.umn.edu/documents/ilj_stalk/iljfinalrpt.html
[23] Criminal Code Act 1899 s. 359C (4)
[24] Criminal Code Act 1899 s. 359B (c)

by The Hon. K. T. Griffin in the second reading of the Criminal Law (Consolidation) Stalking Amendment Bill[25].

Proving intention is not necessarily difficult

The third reason is that, even if intention to harass is included as an element of the offence, when coupled with other administrative measures, establishing the offence of staking is not necessarily being made more difficult. In the LRC Stalking Report[26], arguments for not including intention to harass an element of the proposed offence exist because stalkers may claim that they have no intention of causing harm to their victims[27]. With respect, this does not provide a firm ground of not making such intention an element of the proposed offence of harassment.

In every case which the offence requires a proof of specific intention, it is a common defence put forward by the defendant that he/she did not have the requisite intention. Unless the defendant admits what his/her state of mind was, proving mens rea usually depends on inferring his/her state of mind. No doubt intention to harass is hard to prove unless the defendant engages in conducts that are inherently oppressive, however, just because it is difficult does not mean that one should go against the doctrine of subjective liability, especially when criminal liability under the proposed offence is largely based on how the state of mind of the victim is affected, which is purely a subjective matter. Therefore, instead of twisting the entrenched concept in criminal law by removing the requirement to prove intention to harass, the focus should be on how to establish such intention by other administrative measures.

Conclusion

To conclude, in order to offer extensive protection to victims in stalking cases, it is necessary to cast the offence in wide terms. However, by requiring objective intention to harass only as to the mental elements, the proposed offence will be too broad. To limit its breadth, the objective 'ought to know' mens rea element should be substituted by stalkers' subjective culpable state of mind. Consequently, to establish the proposed offence, the prosecution is required to prove that stalker knows, intends, or is reckless as to whether his course of conduct amounts to harassment of another. Regarding recklessness, the formulation in Cunningham[28] should be adopted as it requires the defendant to have subjectively foresaw the risk of harassment but nevertheless chooses to pursue the course of conduct[29]

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[25] South Australia Criminal Law (Consolidation) Stalking Amendment Bill second reading, dated 16 February 1994 *'Some who have commented on the original Bill have expressed concern about the requirement of intention. The reasoning behind it is as follows. If one takes the view that harassment and intimidation can take a variety of forms, one begins with the idea that the offence should cover as great a variety of behaviours as possible. Indeed, one may describe the gap in the criminal law that the offence is designed to fill as consisting of a course of behaviour which is, in isolation, quite normal and innocent behaviour—such as writing a letter, walking down a street, driving a car and so on. If that is so, then the offence requires limitation. Otherwise, the net would catch behaviour beyond its justifiable range—investigative journalists, residents picketing a demolition, private detectives investigating WorkCover fraud, and the like.'*

[26] The Law Reform Commission of Hong Kong, *Report – Stalking* October 2000 at p.120

[27] n 26

[28] *R v Cunningham* [1957] 2 QB 396

[29] Michael Jackson, 'Criminal Law In Hong Kong' (Hong Kong, Hong Kong University Press, 2003) at p.141

To address the difficulty of proving subjective intention, insights can be drawn from South Australia where the police, upon receiving complaint of stalking, will approach and warn the stalkers. If the behavior continues and the police receive another complaint, the alleged stalker will be arrested and charged. From the prosecution perspective, a further occurrence of the behavior after such a warning can then be presented to the court as intent or knowledge[30]. For those who are mentally ill, provisions can be inserted so that when the courts are of the opinion that harassment existed, but due to mental illness, the alleged stalker cannot form any subjective intention, judges can make orders like restraining orders or even hospital orders as they think fit.

Word count: 1778

[30] Jayne Marshall, *Stalking in South Australia – The Criminal Justice response* Office of Crime Statistics No.25 August 2001at p.3

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To <stalking_consultation@cmab.gov.hk>
cc
bcc
28/03/2012 12:22 Subject 有關是否要把纏擾行為定為刑事罪行諮詢
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

政制及內地事務局:

有關是否要把纏擾行為定為刑事罪行

本人認為絕對需要把纏擾行為定為刑事罪行。纏擾行為往往是罪案發生的前奏。把纏擾行為定為刑事罪行，有效阻嚇市民作出纏擾行為，有助維持社會安寧，減少問題發生所引發的社會成本。
就騷擾罪的最高罰則定為罰款100,000元及監禁兩年的建議，本人覺得罰則絕不過重。騷擾罪間接令受害人的損失嚴重，例如要求受害人將房地產契約轉名、喪失工作、協助作出違法行為...
以一連串纏擾行為造成受害人驚恐或困擾，以致影響受害人的工作及生活即屬刑事罪行。藉纏擾行為威逼受害人作出相對行動，應罪加一等。

受害人應將一連串事件之發生時間，地點，人證等資料記錄作證供。證供充足立即備案，以免受害者再犯。以纏擾罪行涉及私隱，在執法上要作好*指引*。警方絕對要將資料保密，再按兩方之關係，分析這一連串行為的目的，是否在利益上受到威脅。政府亦須好好計劃如何*教育*市民如可報案及記錄，甚麼情況下才到警署備案及不立法的後果。
對纏擾者發出禁制令亦極其重要，在禁制令可保障受害人日後不再受被定罪的纏擾者傷害。
纏擾罪之定立對保障市民利益非常重要，請政府馬上立法把纏擾行為定為刑事罪行。
謝謝！盧卓英

28/3/2012

S0296

敬啟者：

本人近三十年来(1982-今2012)飽受"癮撓"折磨，苦不堪言。近兩年情況更甚一有如病菌，不斷擴散，形成集体式，成個賊党。彼等罪行，罄竹難盡書。此等簡直是"人渣垃圾"，不配稱之為人。盼"癮撓"能早日立法，並將此等"人渣垃圾""繩之於法"。

本人之联络电話：(刪除) (手提)

投訴人 (署名來函)

27.03.2012.

(未能確定寄件人是否願意公開姓名)

28/03/2012 13:24

To "stalking_consultation@cmab.gov.hk" <stalking_consultation@cmab.gov.hk>

cc

bcc

Subject 就制定「纏擾法」的意見

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

[redacted]

Dear webmaster,

以下是一點意見

1. 香港社會並沒有強烈的聲音要求刑事化纏擾行為，亦沒有一些嚴重的法庭案例出現，令社會覺得非立此法不可。非常擔心《纏擾法》的立場背景是要進一步收窄已經在不斷後退的新聞自由。加上在諮詢文件上，對纏擾行為的定義，包括「注視或暗中監視受害人的居所或工作地點」、「在不受歡迎的情況下登門造訪」、「向第三者（包括社 會）披露受害人的私隱」、「在街上尾隨受害人」、「對受害人作出虛假指控」或「謾罵」等，均與記者採訪和新聞言論自由相關，法例一旦通過，將來記者追查涉 及公眾利益議題，，會步步為艱、採訪時如履薄冰，定必損害新聞自由。

2. 纏擾行為的定義還包括「送贈受害人不欲接受的禮物或古怪物件」和「阻礙合法活動」等，又由於「受騷擾」、「令人煩厭」的界定不清，法例將嚴重打擊示威抗議自由。譬如說，向欠薪老闆追討薪金當然會令到他們「受到困擾」，立法後打工仔如何去與老闆討公道？菜園村和美孚新邨八期屋主保衛家園而阻止工程進行、雷曼苦主請願或佔領中環等行動會否變成 「阻礙合法活動」？

3.《纏擾法》的諮詢文件雖然沒有處理「網絡世界」的活動，但越來越多的現實世界的法例，都延伸至互聯網，當中包括「色情及淫褻物品檢控條例」、「違反 公德行為」等，這令人擔心，網上的「虛假指控」或「謾罵」，以致目前網民的「惡搞」式表達方法，會否成為纏擾行為？

4. 目前大部份的纏擾行為，均能透過現有刑法，如「家暴條例」及民事訴訟解決，絕無必要另立為刑事罪行。「刑事化」纏擾行為後，投訴者只需要表示感到困擾，便可以報警求助。低門檻的要求，大大減低投訴人的報案成本：政府代為檢控和執法，法庭訴訟開支全 由公帑支付。這令投訴者和被投訴者處於極不公平位置。

5. 有建議把「新聞採訪」等納入為免責辯護，然而免責辯護是要等案件進入法庭程序時作為抗辯理由，而檢控過程本身已阻礙了正常的採訪活動，而新聞機構亦要負擔昂貴的訴訟費。

我認為《纏擾法》將剝奪每一個公民的採訪、表達、遊行、示威抗議等權利，不應該

5. 有建議把「新聞採訪」等納入為免責辯護，然而免責辯護是要等案件進入法庭程序時作為抗辯理由，而檢控過程本身已阻礙了正常的採訪活動，而新聞機構亦要負擔昂貴的訴訟費。

我認為《纏擾法》將剝奪每一個公民的採訪、表達、遊行、示威抗議等權利，不應該展開立法程序。既然指出纏擾行為常出現於家庭或戀人關係，可以考慮盡快修改家暴條例，加入纏擾行為刑事化，保障受虐人士。

CT Chow

28/03/2012 15:04

To "stalking_consultation@cmab.gov.hk" <stalking_consultation@cmab.gov.hk>
cc
bcc
Subject 有關纏擾行為的公眾諮詢

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

Dear Sir/Madam,

我支持纏擾行為立法。
本人亦曾經受到父親的第三者纏擾接近一年, 當時她不但找人到本人住所附近貼街招、亦有找人以電話恐嚇我們還有找人上門纏擾。而以上各行為, 即使本人報警處理, 警方亦只是說基於法律原則, 他們沒有什麼可以為我做。雖然事情經已完結, 但當中帶結我們的驚慌及困擾, 到現時仍沒有忘記。希望立法後, 可以幫到更多跟我同一境況的人, 而且亦可以給我一個向她追究的權利。
謝謝。

Best Regard
Wrace

民建聯 DAB 20 執誠．服務．承擔

《有關纏擾行為的諮詢文件》
民建聯意見書

規管纏擾行為的討論，歷時已超過了十年，民建聯歡迎當局終於提出具體的立法建議，制訂纏擾法，規定任何人若對其他人造成騷擾，便屬干犯刑事罪行。

我們認為，纏擾法的主要目的，是保障市民不會受到無理的糾纏。事實上，不少市民在日常生活中，經常遇到一些收債或癡情伴侶的纏擾行為的侵害。該些騷擾行為，雖不至於對身體造成傷害，但由於行為的惡意及滋擾性，都令受害人的心靈及精神，飽受折磨及困擾。

市民一直關注如何規管此類滋擾性質的行為，法律改革委員會的私隱問題小組委員早於 1998 年 5 月，便公布了規管纏擾行為的諮詢文件，並於 2000 年發表《纏擾行為研究報告書》，建議將纏擾行為列為刑事罪行，政府亦因此成立跨部門的工作小組，審議有關建議。我們認為，經過了十多年的醞釀、研究及討論，加上市民期望規管纏擾行為的立法工作能盡早落實，本港已具備制訂纏擾法的條件。

另一方面，我們注意到有關立法工作必須做到相對的平衡，特別是涉及到可能影響新聞自由的方面，故此，對於新聞團體關注現有的立法建議內，並沒有具體條文將新聞採訪列為豁免範圍之

(刪除)

Tel: (刪除) Fax: 刪除) E-mail 刪除) ; web: 刪除)

民建聯 DAB 20 真誠．服務．承擔

內，因而影響到新聞工作者的自由採訪權利，我們認為，政府應當重視有關憂慮，並作進一步研究，以改善條文的寫法，確保正當合理的新聞採訪工作，不會受到影響。

最後，我們關注到現時構成騷擾罪的立法建議，其行為必須嚴重至足以使受害人感覺“驚恐或困擾”。我們希望當局能清楚解釋，法例將如何量度受害人受騷擾的“程度”，已達至“驚恐或困擾”，究竟是基於受害人的主觀感受，抑或是檢控官、法官或陪審員的客觀判斷？我們認為，騷擾行為與其他侵害性行為的不同之處，是前者主要看重一些雖屬連串瑣碎的行為，但卻對受害人的精神及心靈，造成無法忍受的滋擾，並需要法例作出保障，故此，難免偏重主觀感受，而此亦是新法例的存在意義。因此，我們希望政府當局能詳加研究有關立法的內容，務求讓真正有需要的受害人，獲得足夠的保障。

盡管當局現時提交的立法建議，仍存在一定爭議，有待釐清，但我們相信，只要當局能持開放的態度，在聽取公眾意見後，完善立法建議，纏擾法的制訂，應能真正解決市民面對不合理的滋擾及纏擾行為的困局。

民建聯

二零一二年三月二十八日

(刪除)

Tel 刪除) Fax 刪除) E-mail. 刪除) Web 刪除)

Patron : Mrs. Selina Tsang
贊助人 : 曾鮑笑薇女士

Chairperson : Dr. Patrick Cheung
主 席 : 張志雄醫生

Director : Dr. Jessica Ho
總幹事 : 何愛珠博士

Against Child Abuse Ltd.
防止虐待兒童會有限公司

Tel: (刪除) Fax: (刪除)
E-mail:

防止虐待兒童會回應有關纏擾行爲的諮詢文件

前言：

防止虐待兒童會於一九七九年成立，是香港唯一專門提供保護兒童服務的非政府機構，致力消除各種虐待兒童事件，並推廣一個關懷及無暴力的環境，促進兒童全面成長及發展，並實踐兒童權利。

就諮詢文件的內容，本會有以下的意見：

1. 本會贊成把纏擾行爲刑事化，因現時民事法未能給予警方執法的權力，對纏擾行爲起不了阻嚇作用。而纏擾行爲對家暴受害人、被追求者纏擾的受害人，以及分居或辦理離婚中的人士造成身心及日常生活的負面影響，若未能及早遏止，纏擾行爲可能會愈趨頻繁，纏擾程度更嚴重，甚至進一步惡化至危險及暴力行爲。

2. 我們建議清晰界定諮詢文件 3.1(a)的「一連串行爲」的定義。我們認爲除了考慮有關行爲的次數外，亦應同時考慮行爲的嚴重性、社會普遍是否認爲該行爲已屬於纏擾行爲，和該行爲是否令受害人感到困擾。

3. 至於把集體騷擾行爲納入纏擾法(參考諮詢文件第 3.11-3.21)，我們認爲需詳細考慮和討論。將集體騷擾行爲納入纏擾法，可能會影響集會、遊行及罷工等集體表達訴求方式，收緊市民在公眾地方表達意見的空間。¶
¶
ü 我們建議把新聞採訪和公眾利益納入免責的條款。市民對涉及公眾利益的事情是有知情權的，將新聞自由納入免責條款，新聞工作者可繼續進行正常及合法的採訪，令新聞自由得到保障之餘，亦應儘快立法保障纏擾行爲受害人的安全。政府現建議的「合理行爲」作免責條款，含意空泛，亦未能釋取香港的疑慮。¶
¶¶

Patron : Mrs. Selina Tsang
贊助人 : 曾鮑笑薇女士

Chairperson : Dr. Patrick Cheung
主 席 : 張志雄醫生

Director : Dr. Jessica Ho
總幹事 : 何愛珠博士

Against Child Abuse Ltd.
防止虐待兒童會有限公司

Tel:
E-mail: (刪除)

ii 建議爲被纏擾的受害人，特別是家暴受害人及其子女，提供適切的輔導及康復服務，支援他們的需要和情緒。

ii 建議警方加強執法，配合相關的法例，制定執法指引，及早介入纏擾行爲，進一步保障受害人及其家人的安全。

ii 建議加強公眾教育，讓市民認識纏擾行爲的相關法例及措施，並爲被纏擾的受害人提供尋求協助的途徑。

總結：

本會支持纏擾行爲刑事化，立法保障家暴受害人及其子女、被追求者纏擾的受害人，以及分居或辦理離婚中的人士及其子女。政府亦應爲被纏擾的受害人及其家人提供輔導及康復服務，支援他們的需要和情緒，及投放更多資源，加強公眾教育，再配合警方的執法，在多方合作下，阻止纏擾行爲，進一步保障受害人。

何愛珠博士
防止虐待兒童會總幹事
二零一二年三月二十八日

To stalking_consultation@cmab.gov.hk
cc
bcc
29/03/2012 04:54 Subject On consultation on stalking 2012
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

However the rules and regulations about stalking will be drafted, they shall not override press freedom and civic right to truth. Journalists do not stalk simply for the sake of stalking or making trouble for the targets. When they keep track of the activities of public figures or any other persons who may be celebrities, it is often out of public interest. By doing so they can monitor if those who are in power misbehave or do anything that may infringe public interest. That means, the right for journalists to perform their reporting and investigating duties sets the foundation for press freedom and social justice and is instrumental in holding the Administration accountable. Meanwhile, the Administration should explore ways to better protect individual rights to solitude for example those of women suffering from domestic violence. This can be achieved by enacting stalking laws or implementing administrative measures/restrictions with details subject to further consultation.

By Chiu Kit Fun

To stalking_consultation@cmab.gov.hk
cc
bcc
28/03/2012 16:20 Subject On consultation on stalking law
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

However the rules and regulations about stalking will be drafted, they shall not override press freedom and civic right to truth. Journalists do not stalk simply for the sake of stalking or making trouble for the targets. When they keep track of the activities of public figures or any other persons who may be celebrities, it is often out of public interest. By doing so they can monitor if those who are in power misbehave or do anything that may infringe public interest. That means, the right for journalists to perform their reporting and investigating duties sets the foundation for press freedom and social justice and is instrumental in holding the Administration accountable. Meanwhile, the Administration should explore ways to better protect individual rights to solitude for example those of women suffering from domestic violence. This can be achieved by enacting stalking laws or implementing administrative measures/restrictions with details subject to further consultation.

By Chiu Kit Fun

(The incoming address and the content of the above emails are the same. To be treated as one submission)

To stalking_consultation@cmab.gov.hk
cc
bcc
28/03/2012 17:14 Subject Stalking

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

Dear Sir/Madam,

I have the following views on the "Consultation Paper on Stalking":

1. I support to legislate against stalking as this will deter the stalker from harassing his victim while currently there is no legislation to help the victim.

2. Suggest stalking be made a criminal offence so that it will have effect on the prevention of stalking. I support the offence be based on the The LRC's recommendation.

3. Collective harassment and harassment to deter lawful activities should be made offences.

4.Support the penalty proposed.

5. Defences recommended by the LRC should be provided.

6. Support the proposal that the court be empowered to make a restraining order to prohibit a person convicted of stalking from doing anything that would cause alarm or distress to the victim.

7. Support the proposed civil remedies for victims.

Regards,

(signed)

(The sender requested anonymity)

關注婦女性暴力協會
提交法律改革委員會
有關纏擾行為的諮詢文件意見書

關注婦女性暴力協會(以下簡稱協會)贊成把纏擾法刑事化，但將《纏擾法》的適用範圍限制於特定情況，並局限於針對家庭及戀愛暴力及性暴力所覆蓋的範圍內所出現的纏擾行為，換言之，有關纏擾法刑事化的條例只適用於所有性暴力及家/戀愛暴力的案件，以保障受害人的生命及協助家庭/戀愛暴力及性暴力受害人(以下簡稱受害人)遠離暴力。

政府於 2009 年修訂家庭暴力條例，新的《家庭及同居關係暴力條例》之保障範圍擴大了，並延伸至前配偶和前異性同居者，以及其他直系及延伸家庭關係成員。受害人可向法院申請強制令，免受另一方的騷擾。但條例旨在提供民事補救，對於保護受害人的人身安全並不足夠，家暴受害者是在眾多受害者中最高危的，特別受虐者決定離開的時期，而在辦理離婚及爭取撫養權期間會產生紛爭，往往要一年半或以上待離婚手續完成後才脫離施虐者的纏擾行為。現時，法例對纏擾的定義沒有清晰列明，風雨蘭的個案顯示: 有婦女被分居的丈夫在門外辱罵及撞門，她報警求助時，警方只可以勸喻其離開，因為這種纏擾行為並不違法，其後，受害婦女因報警無效，只好向法院申請強制令，但因申請時間等待太長，受害人又因報警無效，沒有再次報警，因此期間感到非常困擾及驚恐。

事實上，大部分施虐者都未必需要採取肢體暴力的方法以達控制受虐者的目的，他們會透過性虐待和持續的精神虐待去控制婦女，包括恐嚇、跟踪、滋擾和辱罵等方法，要保障受虐婦女權益, 使法例發揮阻嚇作用，必須把纏擾法刑事化，清楚列明纏擾行為的定義及涵蓋範圍，並且肯定纏擾行為對受害人在身體和精神上的損害。

對於面對性暴力傷害的婦女, 她們在決定報警求助的過程中亦不斷的被侵犯者纏擾, 引致身心處於驚恐的狀況, ，風雨蘭的個案顯示: 有受害人因為被男友強姦，在決定是否報警求助期間，男友及其朋友不停致電施壓，在半日內收到 60 多個電話滋擾；亦有受害人在上庭審訊前幾個月，收到多個沒有來電顯示的恐嚇電話，侵犯者的朋友找到受害人在大陸的父母，並恐嚇若果受害

人不放棄起訴的話，家人不會有好結果，又向受害人的家人暗示，若果受害人不出庭作證，便會給錢作補償，受害人面對很沉重的壓力，又恐怕連累家人的性命。由於沒有立法禁止以上纏擾行為，而警方沒有即時的執法權力，也未能制止以上的事件。

針對家庭/戀愛暴力及性暴力所覆蓋的範圍內所出現的纏擾行為，將纏擾法刑事化，除了可有效保障受害人的人身安全外，更是對社會的一種教育作用。事實上，有很多國家對消除家暴及性暴力的政策上，有很清晰的指引和訂明，社會人士應確認家庭暴力和性暴力是不可容忍的社會價值。並且，對於家庭暴力和性暴力的施暴者，纏擾法的成立，配合法庭頒令的強制性輔導，才是根治纏繞行為的措施。同時，協會亦認為，除了將纏擾行為刑事化外，政府必須向受害人提供經濟、房屋及法律輔導支援，以鼓勵受害人使用法例，亦必須加強警方、社工、律師在家暴和性暴力問題的醒覺意識及執法角色，才能有效減少家/戀愛暴力和性暴力的問題。

最後, 協會認為纏擾法應暫時只局限於針對家庭/戀愛暴力及性暴力所覆蓋的範圍內，也不反對限制於追債及收樓等情況下的纏擾行為，但並不贊同把新聞採訪活動下所引致的纏擾行為刑事化作一併處理，因此舉只會扼殺了新聞自由，作為一間倡議兩性平等及打擊性暴力的婦女團體，透過社會運動表達婦女權益及鼓勵倖存者以不同的渠道發聲，以促使政府改善不足的政策，是非常重要。若果硬要把兩者所引致的纏擾行為刑事化一併處理，我們擔心本來保障婦女權益的法例會帶來沈重的代價，即是市民會失去了表達自由，新聞自由和抗議自由的權利。因此，本會認為應刪除諮詢文件提及的「集體騷擾行為」和「阻嚇合法活動的騷擾行為」兩部份。只將《纏擾法》的適用範圍限制於特定情況，如家庭及戀愛暴力、追債及收樓等情況下的纏擾行為，也將「遊行示威、集會活動」以及記者「新聞採訪」活動豁免於條例之外，以保障記者的工作及公眾的知情權。

關注婦女性暴力協會成立於 1997 年 3 月 8 日，乃非牟利慈善團體，現為公益金會員。本會一直關注社會上性暴力的問題，轄下設有兩個服務單位— 風雨蘭危機支援中心及 Anti-480 反性暴力資源中心，致力支援性暴力受害人，推動性別平等教育，締造無性暴力的社會。

聯絡人： 關注婦女性暴力協會 總幹事 王秀容

查詢電話： (刪除)

E-mail: (刪除)

Website: (刪除)

March 28, 2012

28/03/2012 17:53

To "stalking_consultation@cmab.gov.hk" <stalking_consultation@cmab.gov.hk>
cc
bcc
Subject 有關纏繞行為公眾咨詢的意見

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

政制及內地事務局（第4組）執事先生台鑑：

從 貴局的網頁 （http://www.info.gov.hk/gia/general/201112/19/P201112190173.htm ，19/3/2012）得悉 政府現正就立法禁止纏繞行為咨詢公眾，現特來函就此提出意見。

本人同意應立法禁止纏擾行為。

現行的普通法及刑事法確實存在漏洞，只將不同程度的騷擾行為用不同的條例入罪，而對於一些常見的纏繞行為，例如已離婚夫婦，男方纏繞女方，男方不斷在女方的工作場所徘徊、騷擾女方工作，意圖使女方受到精神痛苦。但現時有鑑於法律上的漏洞，由於男方並未有使用恐嚇言語或粗言穢語；也沒有對女方作出任何攻擊性的動作，以致未能成功入罪。

但男方的纏繞行為的確使女方在精神上受到嚴重傷害，而且男方不斷在女方的工作場所徘徊，亦影響女方的工作，易使上司感到不滿，增加了被辭退的機會。從這角度看，男方雖無在肉體上傷害到女方。但事實上，男方卻使女方精神受到傷害，影響女方的工作及利益，應予以入罪，對上述行為作出阻嚇，以冀保障女方的安全。

因此，本人同意，法律改革委員會「法改會」的建議：「應引入制約纏擾行為的法例，訂明一個人如做出一連串的行為，導致另一人驚恐或困擾，即屬犯罪，並須向受害人負上侵權法下的民事責任。」

本人認為，須將上述等的纏繞行為列為刑事罪行， 貴局建議「應就纏擾罪行的罰則劃一為罰款十萬元及監禁兩年」本人認為可予以實行，以增強阻嚇力，從而減少罪行的發生。

此外， 本人同意貴局建議「應授權法院向一名被定罪的纏擾者發出禁制令，禁止該人做出致使案中受害人或其他人驚恐或困擾的事情」及「違反禁制令應被定為刑事罪行」，以增強阻嚇力，從而減少罪行的發生。

本人認為，若纏繞行為影響到別人的工作，實屬非常嚴重，而且亦會帶來很多社會問題及經濟問題。因此，簡化報案程序實屬必要的行為，亦更有效地阻止纏繞行為。

祝：

(寄件人要求不具名公開意見)

本人認為，若纏繞行為影響到別人的工作，實屬非常嚴重，而且亦會帶來很多社會問題及經濟問題。因此，簡化報案程序實屬必要的行為，亦更有效地阻止纏繞行為。

祝：
台安

(姓名)
二零一二年三月二十八日

註：煩請勿將本人的名字於網頁中公開，謝謝。 政制及內地事務局_咨詢.doc

28/03/2012 18:06

To <stalking_consultation@cmab.gov.hk>
cc
bcc
Subject 纏擾行為應包括公司濫發電話

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

個別Cold Call廣告電話可以接受,
但是本人自己的最新個案,
在3月19日早上10:22先收到一個(刪除) 的推銷電話,
在電話中拒絕並要求不要再接到此類電話後,
於同日早上10:57, 以同一個電話號碼來電, 同樣為推銷相同服務.
同樣拒絕並聲明不要再接到此類電話, 並說明已經在35分鐘前接到同樣電話後.
再主動致電至(刪除) 自己的客戶熱線,
要求該公司把我的電話號碼在他們的推銷電話列表中除去,
但在3月21日再次收到另一電話號碼推銷相同服務,
一樣再次拒絕和要求不再收到有關電話後,
在3月28日又再收到同類電話.

這已經構成了極大的騷擾,
該公司在明知道此電話不想用他們的服務之後,
還在短時間內三番四次的致電,
實際上在3月9日我亦收到過連續兩個由(刪除) 發出的推銷電話,
一樣是拒絕後在一小時內再次致電.

但是現時卻無法例禁止這些公司作出這樣的強硬的推銷手段.
好像不用他們的服務就隔幾天就打一次來硬逼人使用,
不然就會一直受到電話滋擾一樣.
這是嚴重濫用電話來作出騷擾的行為,
絕對應該包括在纏擾罪裏面.

To stalking_consultation@cmab.gov.hk
cc
bcc
28/03/2012 19:20 Subject Public Consultation on Stalking
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

Dear Sir/ Madam,

I am writing in response to a consultation paper released in December 2011 on the need for criminalization of stalking behaviour. I am a university student currently studying law at the University of Hong Kong, and I would like to offer my opinion from a criminal law perspective, particularly on the offence of harassment under point 2 of Chapter 5. I have attached a research paper on the issue. I am of the view that the formulation adopted by the Law Reform Commission is not sufficiently clear and would give rise to much ambiguity, and also believe that there is no need for an additional offense of collective harassment. For further details please refer to the attached file.

Yours faithfully,
(deleted)

Consultation.docx

(The sender requested anonymity)

The Constitutional and Mainland Affairs Bureau released a Consultation Paper on Stalking (the Paper) in December 2011, proposing to criminalize behavior that may amount to harassment, and invited public opinion on a number of issues. In this paper I would like to focus on the government's invitation on comments on point 2 in Chapter 5 regarding the definition of harassment, and whether additional provision related to collective harassment should be included. I will approach the recommendation from a criminal law perspective, considering whether the proposed offense can meet the purpose of deterrence and punishment. Given that the proposed offense of harassment is largely based on the Protection from Harassment Act 1997 (PHA) in England and Wales, a substantial portion of my analysis will be based on the assumption that the Hong Kong courts will follow the UK position in statutory interpretation.

1. Harassment

In essence the recommendation by the Law Reform Commission (LRC) quoted in the Paper consists of three elements, namely (1) a course of conduct pursued, (2) which amounted to harassment of others, and (3) which the defendant know or ought to know amounts to harassment of others. In the UK Act, no further explanations were given about the nature of conduct concerned, except under section 7(2) where reference were made with respect to the consequence of the conduct. As illustrated in a number of decisions in England and indeed acknowledged in the LRC Report, the

provision was intended to cover a wide range of activities[1], many of which are lawful conduct part of our daily lives in itself. LRC attempted to justify the wide scope and not specifying a list of prohibited harassment by claiming that this can prevent potential harassers from exploiting loopholes in the legislation. The Paper also suggested that the word "harassment" is easily understood by the ordinary public[2] and should be left to the jury to decide. I argue that the ambiguous wording carries the risk of both overcriminalisation and undercriminalisation. Indeed harassing conducts often come in different forms, and it is impractical to draw an exhaustive list to encompass all possible situations. Nevertheless such a formulation contradicts the notion of 'fair warning' and will have little deterrent effect.

One of the fundamental objectives of the criminal justice system is to deter potential offenders. It is commonly argued that the main justification for punishment is that it discourages future criminal acts by instilling an understanding of the consequences[3]. Accordingly the law must be sufficiently certain so that individuals have fair warning that by their prospective actions they are in danger of incurring a criminal sanction and can steer themselves from criminal liability, a principle which coincides with the maxim *nullum crimen sine lege*. This requirement for certainty is particularly crucial in the context since acts constituting harassment, when viewed individually, are often

1 *Linda Hipgrave, Joyce Hipgrave v Samantha Jones* [2004] EWHC 2901 para 20
2 *Consultation Paper on Stalking* (December 2011)pp 21 para 3.8
3

legitimate conduct acceptable as part of our daily lives rather than *mala in se*[4]. Accordingly the law should provide citizens with additional guidance instead of leaving the matter to the jury box. In such context, applying a broad formulation can easily deter people from activities that were not intended to be prohibited, and would unduly restrict the rights of law-abiding citizens. It is highly likely that the statutory offense will be challenged by constitutional review for lack of legal certainty[5].

On the other hand, the provisions may give rise to difficulties in law enforcement, allowing stalkers who pose a real threat to their victims to escape from criminal liability. The court in *Pratt v DPP* acknowledged the existence of borderline cases where "prosecuting authorities may have to carefully judge whether the incidents fall within the category of mischief intended to be addressed"[6], that is, that persons should not be put in a state of alarm or distress by repetitious behavior. This "defect" in the offense is rather fatal to the purpose for criminalizing such behavior, namely to protect the victim from the offender's intrusion into their private lives. In other words, the legislation ought to be formulated such that early intervention is possible and escalated behavior that causes substantial distress or psychological harm to the victim can be prevented.[7]

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[4] R A Duff, "Rule-Violations and Wrongdoings" , A P Simester, G R Sullivan, Criminal Law: Theory and Doctrine (North America: Hart Publishing, 3rd Edition, 2007) p 52

[5] In UK, the compatibility of the PHA with Art 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms were considered in *Thomas v News Group Newspapers Ltd* [2002] EMLR 4 and *Eli Lilly & Company Limited and Others v Stop Huntingdon Animal Cruelty and Others* [2011] EWHC 3527 respectively

[6] *Pratt v Director of Public Prosecitions* [2001] EWHC Admin 483 para 12

[7] M J Allen, "Look Who's Stalking: Seeking a Solution to the Problem of Stalking" [1996] 4 Web JCLI

The danger of leaving wide discretion to the police officer is that they may fail to recognize a pattern of abuse and thus are unable to promptly intervene at an early stage to bring the offender to justice.

Flexibility should not be excuse for not including in the offense a list of common stalking behaviour. This is the approach followed in many other common law jurisdictions, for example in Australia[8] and in New Zealand[9]. In particular I would like to draw your attention to the recent enactment in Scotland.

The PHA 1997 merely created a civil course of action regarding harassment in Scotland, and criminal sanctions had been dealt with by the common law offence of "breach of peace". In 2010 the Scotland Parliament enacted the Criminal Justice and Licensing Act (Scotland) 2010 and introduced the offense of stalking in s 39. While the structure of the legislation largely resembles the UK Act in 1997, the 2010 Act included an list of conducts under subsection (6) which are targeted by the Parliament while leaving the list open in subsection (6)(e) by including any other act that "a reasonable person would expect would cause [the other] to suffer or alarm". Adding similar provisions while not limiting the scope will certainly help clarify this area of the law. The list can

[8] Similar provisions can be found in, for example, Criminal Code Act 1899 Cap 33A s 359B (c) in Queensland, Criminal Law Consolidation Act 1935 s 19AA (a) in South Australia, and Crimes Act 1958 s 21A (2) in Victoria
[9] Harassment Act 1997 s 4 (1)

function as a standard reference of the gravity of conducts that a reasonable person ought to consider would cause alarm or distress to others, so that ordinary citizens know the limits to their liberties, and police officers can identify those stalking allegations that should be pursued by prosecution and those that should not. The substantial effect of this is evidenced by the fact that 400 alleged stalkers were prosecuted in Scotland in 2011, compared with 70 in the past decade under the UK Act.[10]

2. <u>Collective harassment</u>

It was also suggested in the Paper that a separate provision be included in the anti-stalking legislation to supplement the offense-creating provision so as to target situations where an individual may be harassed by two or more people. The consultation paper mentioned the possibility of charging the potential offenders under such circumstances as secondary parties, either for aiding, abetting, counseling or procuring the commission of the offense pursuant to section 89 of the Criminal Procedure Ordinance; or as part of a joint enterprise. It was suggested, given that prosecution may face difficulties in proving complicity in harassment, that it is necessary to include an additional provision to address the issue.

[10] "Police failing to take stalking complaints seriously, inquiry finds", *The Guardian*, 7 February 2012

The paper referred to the subsection inserted into PHA by the Criminal Justice and Police Act 2001, under which where A aids, abets, counsels or procures B's conduct, for the purpose of PHA, the conduct of B will be deemed to be A's as well; and the relevant state of mind will be assessed at the time of the aiding, abetting, counseling or procuring. It is worth noting that, although enacted a decade ago, the deeming provision was rarely directly applied in courts. Participation liability in civil claims where the perpetrators involve the employees of a company[11] are dealt with by court interpretation.[12] There are tort claims involving a large group of protestors where the court ruled in favour of the claimant even though they were unable to identify the actual perpetrator in each instance[13], but it is unlikely that the reasoning will be applied in criminal cases, bearing in mind the higher standard of proof required. By considering a further basis for liability not considered in the consultation paper, I argue that such deeming provisions are unnecessary in preventing the mischief aimed at. Alternatively, I argue that if the provision is to be included, a higher threshold of *mens rea* should be required.

Where the group harassment involves a company, the company may be held vicariously liable for the conduct of its employees. As a general rule, in order for corporate liability to be established, it must be shown that the person carrying out the *actus reus* elements was in control of the

[11] Archbold 2012 Chapter 19 Section X
[12] *Majrowski v Guy's and St Thomas's NHS Trust* [2007] 1 AC 224 para 19
[13] *Huntingdon Life Sciences v Curtin and Others* [1998] ENV LR D9

(The sender requested anonymity)

company[14], or in other words, he must be regarded as the corporation's 'brains'[15]. Jacob LJ in *Ferguson v British Gas Trading Ltd*[16], however, expressed the view that the question of corporate liability is a matter of construction[17]. It was said that "as a matter of construction it seems a company must be taken to have knowledge of material within the knowledge of its employees, even if top management know nothing of the particular case."[18] The case concerns harassment by computer-generated bills and letters, but the same reasoning can be equally applied to other conduct amounting to harassment.

Debt-collection activities and other similar conducts are often carried out by the employees of the company, and in the context of such category of harassment, what the offense should achieve to discourage should be the decision to use, or approval of the use of overt acts. The punishment should be directed to the company itself rather than to its employees, who may be nothing more than agents of the legal entity. It is indeed difficult to see why the latter should be subjected to condemnation by law. By applying the same principles regarding corporate liability, the Hong Kong courts can grant injunctive relief against the corporation to the victims and serve the above purpose. In terms of the specific deterrent effect on the real culprit, this approach is more

[14] *Tesco Supermarkets Ltd. V Nattras* [1972] AC 153 as applied in *Lee Tsat-pin* [1984] Cr App No. 315 of 1985
[15] Michael Jackson, *Criminal Law in Hong Kong* (Hong Kong: Hong Kong University Press, 2003), p.398
[16] [2010] 1 WLR 785
[17] Ibid, para 35
[18] Ibid, para 42

preferable than prosecution by the general rules of complicity, for in the latter, it can simply be arranged that another employee continue the harassing conduct. Criminal sanctions against a corporate body would have far more significant implications that would offer more protection to the victims from repeated corporate offenders.

On the second issue, in the event that an additional provision regarding collective harassment is included, the scope of application should be restricted to cases where specific intent, or at least 'wilful blindness', can be established. The reasons for excluding liability based on imputed, or constructive knowledge is that, for the purpose of group harassment, the issue of delusional erotomanics[19] is largely irrelevant. The rationale for including an objective *mens rea* element in the main offense is target stalkers or perpetrators who either had a former intimate relationship with the victim[20], or act out of "love" for the victim[21], and it is rather rare that such conducts be pursued in the form of groups.

3. Conclusion

Returning to the recommendation in the consultation paper, after considering the relevant principles in criminal law, I am of the opinion that:

[19] The Law Reform Commission of Hong Kong, *Reform on Stalking* (October 2000) p 121 para 6.60
[20] Ibid p 10 – 11 para 1.27
[21] Ibid p 10 para 1.25 – 26

a. a list of specific conducts without prejudice to the generality of the scope of the clause should be included as guidelines to citizens and law enforcement officers; and

b. it is unnecessary to include a separate provision to deal with collective harassment.

(The sender requested anonymity)

Bibliography

Hong Kong legislation

Cap 221 Criminal Procedure Ordinance s 89

Other legislation

Protection from Harassment Act 1997 ss 1(1), (2) 7(3A)

Criminal Justice and Licensing Act (Scotland) 2010 s 39

Convention for the Protection of Human Rights and Fundamental Freedoms Art 10, 11

Criminal Code Act 1899 Cap 33A s 359B (c)

Criminal Law Consolidation Act 1935 s 19AA (a)

Crimes Act 1958 s 21A (2)

Harassment Act 1997 s 4(1)

Cases

Eli Lilly & Company Limited and Others v Stop Huntingdon Animal Cruelty and Others [2011] EWHC 3527

Ferguson v British Gas Trading Ltd [2010] 1 WLR 785

Huntingdon Life Sciences v Curtin and Others [1998] ENV LR D9

Lee Tsat-pin [1984] Cr App No. 315 of 1985

Linda Hipgrave, Joyce Hipgrave v Samantha Jones [2004] EWHC 2901

Majrowski v Guy's and St Thomas's NHS Trust [2007] 1 AC 224

Pratt v Director of Public Prosecitions [2001] EWHC Admin 483

Tesco Supermarkets Ltd. V Nattras [1972] AC 153

Thomas v News Group Newspapers Ltd [2002] EMLR 4

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Andrew Ashworth, "Conceptions of Overcriminalization" Ohio State Journal of Criminal Law [Vol 5:407 2008]

Brenda Barratt, "Protection from Harassment Act 1997" Ind Law J (1998) 27 (4): 330

M J Allen, "Look Who's Stalking: Seeking a Solution to the Problem of Stalking" [1996] 4 Web JCLI

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Andrew Ashworth, *Principles of Criminal Law* (United States: Oxford University Press, 5th Edition, 2006)

A P Simester, G R Sullivan, *Criminal Law: Theory and Doctrine* (North America: Hart Publishing, 3rd Edition, 2007)

James Richardson, *Archbold 2012: Criminal Pleading, Evidence and Practice*

Michael Jackson, *Criminal Law in Hong Kong* (Hong Kong: Hong Kong University Press, 2003)

Stephen Shute and A.P. Simester, *Criminal Law Theory: Doctrines of the General Part* (United States: Oxford University Press, 2002)

Newspaper Articles

"Police failing to take stalking complaints seriously, inquiry finds", *The Guardian*, 7 February 2012

(The sender requested anonymity)

To "stalking_consultation@cmab.gov.hk" <stalking_consultation@cmab.gov.hk>
cc
bcc
28/03/2012 19:56 Subject 纏擾行為的諮詢文件
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

敬啓者: 有關政府就上述標題的諮詢, 及建議將任何人仕作出上述行為皆屬違法及受到判形, 本人完全同意, 並建議傳媒機構亦不應享有任何的免責條款, 例如最近有些藝人在家中的私生活亦被一些傳媒偷拍, 這些傳媒應受到此法律的制裁, 他們不能以新聞自由為借口, 便常常為所欲為, 莫視法紀。

蘇先生 謹上

(寄件人要求不具名公開意見)

To stalking_consultation@cmab.gov.hk
cc
bcc
28/03/2012 20:26 Subject 纏擾法

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請政府小心處理立法後所帶來無憂無止的濫用，立此法例為保障婦女及收數公司，為何不以保障以上2項事宜加強以此為重點，反而令法例套上多重灰色情地帶令好多只為推廣產品或記者採訪因而付上法律責任，尤其以記者採訪會否付上法律責任既機會會無止境，以好多遊客被那些奸商欺騙購買左一些劣質產品有好多時報警都無用所以好多遊客都找記者幫忙討回公度，若此法例立法後那些奸商反而引用此法例以纏擾為理由要求警方拉被欺騙的遊客及記者纏擾，如這事不斷發生咁記者怎樣幫市民及公平地採訪令公眾有任何知情權，所以記者採訪絕對要有括免權請政府小心處理立法後所帶來無憂無止的濫用，立此法例為保障婦女及收數公司，為何不以保障以上2項事宜加強以此為重點，反而令法例套上多重灰色情地帶令好多只為推廣產品或記者採
訪因而付上法律責任，尤其以記者採訪會否付上法律責任既機會會無止境，以好多遊客被那些奸商欺騙購買左一些劣質產品有好多時報警都無用所以好多遊客都找記者幫忙討回公度，若此法例立法後那些奸商反而引用此法例以纏擾為理由要求警方拉被欺騙的遊客及記者纏擾，如這事不斷發生咁記者怎樣幫市民及公平地採訪令公眾有任何知情權，所以記者採訪絕對要有括免權

To stalking_consultation@cmab.gov.hk
cc
bcc
28/03/2012 20:56 Subject 反對制訂《纏擾法》

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http://www.inmediahk.net/node/1012732

獨立媒體（香港）反對制訂《纏擾法》意見書

週三, 2012-03-21 11:24 — webmaster

獨立媒體（香港）反對制訂《纏擾法》意見書

獨立媒體（香港）（下稱本會）的宗旨為推動民間的獨立媒體發展，就特區政府計劃把纏擾行為刑事化，表示強烈反對。本會認為此項立法將嚴重損害香港的新聞採訪與集會抗議自由，並妨礙公民媒體的發展。

一) 香港沒有需要訂立《纏擾法》

1. 打擊新聞採訪自由

香港社會並沒有強烈的聲音要求刑事化纏擾行為，亦沒有一些嚴重的法庭案例出現，令社會覺得可。這令我們非常擔心《纏擾法》的立場背景是要進一步收窄已經在不斷後退的新聞自由。事實法，剛好又在副總理李克強訪港後，執法機關多番公然打壓新聞採訪的背景下提出。

諮詢文件特別引入英國同類型法案中「集體騷擾」一項，即多人纏擾同一對象一次即算犯罪。若政治或公眾人物，社會議題時，集體採訪隨時變「集體纏擾」。

再加上，在諮詢文件上，對纏擾行為的定義，包括「注視或暗中監視受害人的居所或工作地點」迎的情況下登門造訪」、「向第三者（包括社會）披露受害人的私隱」、「在街上尾隨受害人」作出虛假指控」或「謾罵」等，均與記者採訪和新聞言論自由相關，法例一旦通過，將來記者追益議題，如特首有沒有貪污、特首候選人有沒有行為失當或箝制言論自由等，會步步為艱、採訪定必損害新聞自由，不利媒體監察權貴，為公義和弱勢群體發聲。

2. 打擊示威抗議自由

除上述有礙新聞自由的定義外，纏擾行為還包括「送贈受害人不欲接受的禮物或古怪物件」和「動」等，又由於「受騷擾」、「令人煩厭」的界定不清，法例將嚴重打擊示威抗議自由。譬如說追討薪金當然會令到他們「受到困擾」，立法後打工仔如何去與老闆討公道？向高官送上示威牌向特首詢問粟米石斑飯價錢會否變成「贈送不受歡迎物品」？菜園村和美孚新邨八期屋主保衛家進行、雷曼苦主請願或佔領中環等行動會否變成「阻礙合法活動」？將來示威者以鏡頭紀錄警員被告以纏擾？本會深切憂慮條例將打壓社運、遊行集會的權利以及方式。

3. 纏擾會否包括網絡言論與表達

《纏擾法》的諮詢文件雖然沒有處理「網絡世界」的活動，但越來越多的現實世界的法例，都延當中包括「色情及淫褻物品檢控條例」、「違反公德行為」等，這令人擔心，網上的「虛假指控罵」，以致目前網民的「惡搞」式表達方法，會否成為纏擾行為？本會認為這項立法會對網絡上成巨大的威脅。

二) 不應把把纏擾行為定為刑事罪行

本會認為目前大部份的纏擾行為，均能透過現有刑法，如「家暴條例」及民事訴訟解決，絕無必罪行。

「刑事化」纏擾行為後，投訴者只需要表示感到困擾，便可以報警求助。低門檻的要求，大大減案成本：政府代為檢控和執法，法庭訴訟開支全由公帑支付。這令投訴者和被投訴者處於極不公商賈反而不用一分一毫便能對付異見者及採訪媒體。若警方沒有計劃增加資源處理眾多的求助，況下，將來會否出現選擇性執法？可以預期，法例實施後容易否變成權貴高官打壓異議聲音和進具。

三) 免責辯護難以保障公民權

有建議把「新聞採訪」等納入為免責辯護，然而免責辯護是要等案件進入法庭程序時作為抗辯理程本身已阻礙了正常的採訪活動，而新聞機構亦要負擔昂貴的訴訟費。此外，「新聞採訪」的免障無償的公民採訪活動，結果變相會把公民新聞採訪活動刑事化。

本會認為《纏擾法》將剝奪每一個公民的採訪、表達、遊行、示威抗議等權利，不應該展開立法內地事務局在行政長官換屆期間提出諮詢，又把諮詢期定在選舉月內，實屬不妥，局方終止立法然指出纏擾行為常出現於家庭或戀人關係，我們促請政府盡快修改家暴條例，加入纏擾行為刑事人士，而不是捆綁式為纏擾行為立法，捨易取難。

請大家積極發表意見，前往各區民政事務處諮詢服務中心索取諮詢文件或政制及內地事務局下載年3月31日或之前把意見郵寄至香港添馬添美道2號政府總部東翼12字樓政制及內地事務局第4（2523 0565）、電郵至stalking_consultation@cmab.gov.hk。

專欄文章

文字　纏擾法　言論自由

回應

積極發表意見

週三, 201

請大家積極發表意見，前往各區民政事務處諮詢服務中心索取諮詢文件或政制及內地事務局下載，並於2012年3月31日香港添馬添美道2號政府總部東翼12字樓政制及內地事務局第4組，或以傳真（2523 0565）、電郵至stalking_consultation@cmab.gov.hk。

To stalking_consultation@cmab.gov.hk
cc
bcc
28/03/2012 21:30 Subject 有關纏擾行為的 諮詢文件 二零一一年十二月

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敬啓者，

本人強烈反對制訂《纏擾法》因將纏擾行為刑事化，將會嚴重損害香港的新聞採訪與集會抗議自由，並妨礙公民媒體的發展。

一位關心香港人權、法治、及言論採訪自由的家庭主婦上

28/03/2012 21:34

To "stalking_consultation@cmab.gov.hk" <stalking_consultation@cmab.gov.hk>
cc
bcc
Subject 有關：「禁止纏擾行為諮詢」意見

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

敬啟者：

本人對「禁止纏擾行為」意見如下。

就纏擾行為對於社會造成的傷害，不單是受害人的本身，而是對社會的整體民主造成打擊。
民主本身是相互的，人與人本是公平的彼此尊重，然而，越來越多人和個別行業的從業者
忽略了尊重，如新聞界會把藝人的私隱作為增加銷情的手段，地產從業員把公眾地方變作
銷售市場，甚至人流如鯽的狹小通道上，造成了一個人肉魚網，使路過者也不堪煩擾；亦
有個別的推銷活動，如售賣慈善獎券等，也使人揣不過氣。更惶論那些受滋擾者作出有形
或無形的心理恐嚇，生活便終日惶恐了。
如果自由是平等的話，對於作出滋擾或纏擾的人，便等同作出剝奪民主自由的行為，政府
應給予具阻嚇的法規，以保障民主精神，使大家同享自由的空間。
再說，即使現行法例已定下的法例，仍很多人故意去作出抵觸的行為，故此，我們沒有理
由只重視濫用自由的人或從業員，而忍受其剝奪其他人的自由。
亦如，現行法例下不可在指定的地方吸煙，但不難看見有吸煙者在那些地方吸煙，若不是
執法人員上前勸喻，吸煙者大都置若罔聞；又如不依交通燈過馬路，要不是有警員正在執
法，常見路人亂過馬路的情況，即使有車輛奔馳而至，個別路人更像車輛可必然閃避或停
下，而且，任何年齡的人士也有的。

有法例與沒有法例的分別，是在不依法例的人士越來越多，在嚴重影響其

下，而且，任何年齡的人士也有的。

有法例與沒有法例的分別，是在不依法例的人士越來越多，在嚴重影響其他人的情況下，
才執行法例，這比起單依靠執法人員或場地管理人員的勸籲起更多的說服力。

小市民

電郵地址： stalking_consultation@cmab.gov.hk

本人非常贊成立法禁止纏擾行為，而纏擾行為定義不應只涵蓋銀行追債，電話之騷擾，另外，應包括居所的鄰居(樓上樓下)的持續性的噪音和行為滋擾，而這一些行為令人產生一些心理負荷或恐懼，本人欲分享以下親身個案以作參考:

1. **外傭欠債 (滋擾時間: 4 個月)**
   本人被前外傭的財務和電訊公司多次致電及來信進行騷擾，每次我已跟據他們指示把終止合約通知書傳真對方作為參考，可惜的是仍不斷收到滋擾，甚至乎用粗言穢語或出言恐嚇的手段，對本人和家人造成心理壓力和感到自身安全受到威脅。

2. **噪音 (滋擾時間: 6 個月)**
   本人多次向屋苑管業處和肇事單位反映有關該單位發出大量噪音，令本人不勝其煩。

3. **非法僭建(滋擾時間: 長達 5-6 年)**
   本人曾多次向特首辦，屋宇處，屋苑管業處反映有關問題，但到目前為止問題尚未徹底解決，更甚的是僭建物業主曾多次攀爬到本人單位外出處(花槽位置) ，本人亦曾就此事報警，但最終未受理會。本人家中育有稚女數名，令本人擔心他們的安全而深受精神困擾。

4. **天花漏水(滋擾時間: 長達兩年)**
   本人亦多次向多個有關部門反映求助，但事件未獲得徹底處理，最後唯有自費聘請律師處理方能止水，事件亦擾攘接近兩年，精神和金錢損失不菲。

就以上事件令本人深信立法禁止纏擾行為是刻不容緩。

謝謝!

(姓名)
二零一二年三月二十八日

(寄件人要求不具名公開意見)

To stalking_consultation@cmab.gov.hk
cc
bcc
29/03/2012 00:11 Subject Legislation on Stalking

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

Dear Sir/Madam,

本人成名(身分證號碼 (刪除))是一名大學教授，現具函反對政制及內地事務局擬議另立新例禁制纏擾行為，因為有關新例誓將影響新聞自由和市民請願遊行等表達自由。

本人認為，政府可考慮在《家庭及同居關係暴力條例》、《放債人條例》及《業主與租客條例》中加入禁止纏擾行為的條款，以保障受前歎舊愛纏擾的男女、無辜受收債行為影響和因強迫收樓而受逼迫的小市民。

Sing, Ming

Ming SING
Associate Professor
(刪除)

email:
Tel.:
Fax : (刪除)

URL: (刪除)

To "stalking_consultation@cmab.gov.hk" <stalking_consultation@cmab.gov.hk>
cc
bcc
29/03/2012 00:19 Subject 有關纏擾行為的諮詢文件
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

政制及內地事務局長譚志源先生：

政府將會立法有關纏擾行為向公眾諮詢，電視播放宣傳片給大眾市民，如果市民在街外地方無論公眾和私人地方各任何場所就算被人騷擾行為應通知警方尋求協助。

本人建議有關纏擾行為將會立法作出改善，法例修訂受害者受保護可採取預防措施。

1. 無論在學校的教職員和學生、公司所做的公司或者之前公司的同事、上司、辦公室的文職和行政人員、商店的店員、食肆的伙記、銀行分行職員等.....相識的朋友無論識同性和異性真是拒絕不做朋友沒有誠信不守信用的人，尤其是情侶在拍拖感情及已婚的夫婦遇上衝突和爭執也要分手和離婚不做朋友和夫妻再在街外地方被人騷擾而作出過火行為來恐嚇、挑釁、用粗暴和武力對待他人也受到極大傷害，受害者應通知警方尋求協助。警方憑證據拘捕涉案人犯案動機早日繩之於法。

2. 現在資訊科技發展一日千里，不少通訊器材引入智能化、電腦和數碼化年代取代舊式儀器的通訊器材，隨著電腦、手機、IPad、itunes不斷進步和改良，手機接到對方的來電及電腦的互聯網收到不良資訊受滋擾和騷擾他人性傷害帶有色情和暴力資訊引誘人，受害者將手機由對方曾經來電的號碼和互聯網的電郵應立即通知警方。

3. 已搬遷的房屋所居住的屋主各家庭成員、已居住父母、祖父母、親友、兄弟姊妹、夫妻想返舊居探望鄰居、住客及本屋苑無論住屋邨、居屋、唐樓、私人屋苑和豪宅、設某個商場及會所正在當值的保安人員、客戶服務及會所工作人員當客人、住客及陌生人接待更遇上不尋常行為導致他人傷害作人生攻擊或騷擾、恐嚇、挑釁、滋擾、誹謗、侵犯人身……相識的人和不相識的陌生人已相識的朋友、同學、同事在個人及群體生活、社交參與不同類型的活動均享有自由和權利喜歡做的事。

4. 已離職的員工想返舊公司工作或探望同事、上司級只包括經理、主

已相識的朋友、同
學、同事在個人及群體生活、社交參與不同類型的活動均享有自由和權利喜歡做的事。

4. 已離職的員工想返舊公司工作或探望同事、上司級只包括經理、主管、董事級高層行政人員來辦公
室、工廠的工場、商店、銀行、學校以各個機樓及多個地方無論公眾和私人地方當不想見到最討厭的
人及途經陌生人被人騷擾、恐嚇、挑釁、滋擾、誹謗、侵犯人身。被騷擾的人糾纏發生爭執而阻止不
到應即時通知警方。

撰寫新聞稿工作者鄭先生

S0315

(寄件人要求以保密方式處理意見書)

(The sender requested confidentiality)

29/03/2012 01:46

To <stalking_consultation@cmab.gov.hk>
cc
bcc
Subject Submission Regarding Stalking Legislation

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

Dear Sir/Madam,

I am writing to submit my opinion on the stalking legislation in the form of a MS Word attachment . Thank you for your attention.

With Regards,

Billy Lui **Billy Lui - Submission on Stalking Legislation.doc**

Submission to the Constitutional and Mainland Affairs Bureau on Stalking Legislation

Name: Billy Lui

Safeguard for the Media – Is There Enough Protection for Press Freedom?

Introduction

In December 2011, the HK government issued a new Consultation Paper to invite comments on criminal legislation on stalking.[1] One of the major controversies is on whether a separate defence for news-gathering activities should be introduced. The HKJA holds the view that the defence is necessary,[2] while the Law Reform Commission suggests that a general defence of "reasonable in the particular circumstances" provides sufficient safeguard to freedom of press.[3] In this submission, I would analyse the desirability of the current proposed defences in the perspective of criminal law.

In particular, I suggest:

(i) introducing a public interest defence to supplement the "reasonable in the particular circumstances" defence; and

(ii) providing a statutory "body of opinion" criterion on how the reasonableness test should be applied in news-gathering activities.

Public Interest Defence

The LRC's reasoning in the rejection of public interest defence is found in the 2000 Report on Stalking Legislation.[4] It reads:

"Since the public interest in a matter pursued by journalists would be taken into account by the courts if the defence of reasonable pursuit were adopted, we conclude that it is unnecessary to provide for the defence of public interest in the legislation."[5]

With respect, this argument is fallacious. The statement would only be valid if the defence of reasonable pursuit entails public interest defence. Nonetheless, the LRC in previous paragraphs in the same report conceded that the notion of public interest is "both narrower and wider" than the defence of reasonable pursuit.[6] One example to illustrate the wider nature of public interest defence is that a journalist may commit the offence of harassment by unreasonable pursuit in the circumstances, yet on an

[1] Consultation Paper on Stalking, December 2011
[2] HKJA Submission to CMAB on Government Consultation Paper on Stalking, March 2012
[3] Consultation Paper on Stalking, December 2011, para 3.48
[4] The Law Reform Commission of Hong Kong Report –Stalking, October 2000
[5] Ibid, para 7.38
[6] Ibid, para 7.36 and 7.37

issue which is of public interest. In this situation, the journalist can escape liability only by the public interest defence, but not the defence of reasonable pursuit.[7] Why should a journalist be convicted in this situation? Neither the 2000 Report nor the 2011 Consultation Paper justifies it.

The LRC framework for stalking legislation is largely based on the Protection from Harassment Act 1997 of the UK. In fact, there have been concerns on the insufficiency of the defence of reasonable pursuit in protecting freedom of press in the UK.[8] Lawson-Cruttenden and Addison commented that journalists can easily be charged with criminal harassment under the Act, even if the accused finally gets acquitted by relying on the reasonable pursuit defence, given the broad nature of the defence.[9] Similar comments have been made by HKJA. They pointed out public figures may abuse the Ordinance to initiate interception of news-gathering activity by the police, without the case eventually being brought to court.[10] Therefore, I am proposing a public interest defence as supplement, thereby increasing the scope of defence and decreasing the likelihood the offence being abused. In fact, the undesirability of the legislation has also been admitted in judicial judgments. In *Huntingdon Life Sciences Ltd v Curtin*,[11] it was suggested by Eady J that:

"It (Protection from Harassment Act) was clearly not intended by Parliament to be used to clamp down on the discussion of matters of public interest..... the courts will resist any such wide interpretation as and when the occasion arises, but it is unfortunate that the terms in which the provisions are couched should be thought to sanction any such restrictions."[12]

Although the comment is more particularly directed towards publication of news and demonstrations, it clearly shows there is judicial acknowledgment that wordings in the Act have a mismatch with legislative intent. Eady J opines that public interest should be given the highest priority in order to protect freedom of press and speech.[13]

Critics to my proposition may argue that the court have already addressed the concerns of Eady J's in their approach of construing the defence of reasonable

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[7] Ibid.
[8] Lawson-Cruttenden, T. and Addison, N. , *Blackstone's guide to the Protection from Harassment Act 1997*, (London : Blackstone Press, 1997), para 2.14, p. 18
[9] Ibid.
[10] HKJA Submission to CMAB on Government Consultation Paper on Stalking, March 2012, para 3
[11] *Huntingdon Life Sciences Ltd v Curtin* [1997] TLR 646. See also Hudson, A., *Privacy: a right by any other name*, EHRLR 73, at 82
[12] Ibid.
[13] Ibid.

pursuit.[14] In *Thomas v News Group Newspapers Ltd*,[15] Lord Phillips M.R. explicitly recognized the importance of freedom of press when interpreting the defence. [16]Nonetheless, this still fails to address the problem that there can be situations that the matter is of public interest while the pursuit of news-gathering can be ruled to be unreasonable. In addition, it is not alien that some common law jurisdictions have adopted public interest defence on stalking law. In Queensland of Australia, Chapter 33A of the Criminal Code expressly laid down that *(c) acts done ... for issues carried on in the public interest and (d) reasonable conduct engaged in by a person for the person's lawful trade business or occupation* are excluded for the purpose of unlawful stalking.[17] This piece of legislation has multiple implications. First, it shows there are common law jurisdictions which adopt the public interest defence. Second, the public interest defence and the reasonable pursuit defence have their respective individual value, echoing LRC's concession that the latter is both wider and narrower than the former defence.[18] Third, as an amendment to the Queensland stalking legislation was passed only in 1999, it has taken into account the implications of the UK Protection from Harassment Act, and is possibly more compatible to current social circumstances.[19] It is also noteworthy that the reasonable pursuit was a new defence introduced by the amendment bill in 1999, meaning that the legislature deemed it necessary to keep the old public interest defence despite the introduction of the defence of reasonable pursuit.[20] Moreover, the legislative debate on the Protection from Harassment Act 1997 in the UK has put journalists, debt collectors, sales persons, etc. in the same category of potential subjects under the Act.[21] My submission is that the case of journalists at least warrant a separate discussion as it involves an additional constitutional element of freedom of speech/press. As the LRC model is largely based on the UK Act, the same problems will be accrued to the HK version.

The law on stalking in the United States also has its referential value. California is the

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[14] Consultation Paper on Stalking, December 2011, para 3.39. It was suggested that the courts should take into account the rights and freedoms provided in the International Covenant on Civil and Political Rights when determining whether the pursuit in question was reasonable.

[15] *Thomas v News Group Newspapers Ltd* [2002] E.M.L.R. 4

[16] Ibid., para 32

[17] Criminal Code of Queensland, Chapter 33A – Unlawful Stalking, section 359D

[18] The Law Reform Commission of Hong Kong Report –Stalking, October 2000, para 7.36 and 7.37

[19] The amendment was introduced by the Criminal Code (Stalking) Amendment Act 1999, Act No. 18 of 1999

[20] Ibid. See also the parliamentary debate of Queensland Parliament on 13 April 1999, p 986-987 http://www.parliament.qld.gov.au/documents/Hansard/1999/990413ha.pdf#xml=http://www.parliament.qld.gov.au/internetsearch/isysquery/f98caab2-440f-470e-bb69-53261be68595/1/hilite/

[21] See UK Hansard, 17 December 1996, Column 784 http://www.publications.parliament.uk/pa/cm199697/cmhansrd/vo961217/debtext/61217-12.htm

first State in the US which passed its anti-stalking legislation.[22] According its Penal Code 646.9, "constitutionally protected activities" are specifically exempted from the operation of anti-stalking legislation.[23] Such activities refer to acts related to the exercise of freedom of press. My proposal of public interest defence is less aggressive than this blanket defence approach, and is more desirable in balancing freedom of press and rights of individuals who are subject to news-gathering activities.

Hence, I submit that there is a need to introduce public interest defence.

The public interest defence shall be drafted as:

News-gathering activities should be exempt from liability provided that:
(a) the pursuit is conducted by the staff of a News Organisation; and
(b) the information gathered is related to public interests.[24]

For the purpose of this Ordinance, News Organisation refers to an organization whose business, or part of whose business, consists of a news activity.[25]

Reasonableness under the Defence of Reasonable Pursuit

The Legal Aid Department has once suggested improving the clarity of the reasonable pursuit defence by introducing guidelines to the test of reasonableness.[26] Its suggestion of the guidance of "acting reasonably in the course of his profession, trade, business or other lawful activity" had been rejected by the LRC on the basis that code of practice merely lays down general practice and fails to take into account the "in the circumstances" requirement.[27] In my opinion, LRC is correct only if the code of practice is the sole evidence of what practice of the profession is. The truth is quite the contrary. While the code of practice is general in nature, the testimony of a

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[22] Cavanagh, S., Teasley, D. and Knowles, G., Stalking: *Recent Developments in* Wang, L. G., *Stalking and Domestic Violence*, (New York: Novinka Books, 2004), p. 11

[23] See California Penal Code 646.9 (f) and (g). These two sections exclude constitutionally protected activities such as those related to freedom of press from the definitions of "course of conduct" and "credible threat", which were two elements essential for the offence of harassment under California Penal Code

[24] This draft is modified from the proposal by Professor Kenneth W Y Leung of the Chinese University of Hong Kong in The Law Reform Commission of Hong Kong Report –Stalking, October 2000, para 7.32. Professor's model was criticized for the uncertainty and undesirability for defining a "bona fide" news organization. The requirement of the news organization being "bona fide" is hence removed in my proposal.

[25] This definition of news organization is borrowed from s61 (1) of the Personal Data (Privacy) Ordinance, Cap. 486

[26] The Law Reform Commission of Hong Kong Report –Stalking, October 2000, para 7.40

[27] Ibid, para 7.41 and 7.42

responsible body of opinion is dynamic and can take into account the relevant "circumstances". It is advisable for the proposed legislation framework to compel the court to consider the opinion of Journalists Association or other journalist bodies to determine whether the accused journalist was "acting reasonably in the circumstances". One example can be drawn from the famous "*Bolam*" test in medical negligence cases in establishing the reasonable standard of duty which a medical practitioner owes to the patient.[28] The only obstacle in adopting that legal principle in the context of stalking is that the "*Bolam*" originates in the civil law litigations. However, I respectfully disagree because the "*Bolam*" test has been adopted in such leading criminal cases as *R v Arthur*[29] or *Airedale NHS Trust v Bland*[30] to determine the criminal liability of a medical practitioner. Although the use of "*Bolam*" test in medical cases does not automatically warrant the extension of the principle to news-gathering activities regarding stalking law, there is equally no powerful argument for not adopting this course.

Critics may argue the accused journalist can still adduce similar evidence in the form of expert testimony even if the statutory framework does not specifically provide the relevance of it to the test of reasonableness.[31] I respectfully disagree. First, although the experience of the Protection from Harassment Act 1997 in the UK in *Thomas v News Group Newspapers Ltd* suggests the court will take into account freedom of press when deciding whether the pursuit is reasonable, there was no reference to whether the court will consider the opinion of a responsible body of journalist.[32] Second, even if the court has implicitly considered the relevance of the opinion, the weight of the opinion would only be guaranteed if it is confirmed by a statutory provision. It is believed freedom of press can only be properly protected by adopting these suggestions.

The relevant defence shall be drafted as:

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[28] The *Bolam* test was formulated in the case of *Bolam v Friern Hospital Management Committee* [1957] 2 All ER 118. McNair J ruled that *"If that statement of the true test is qualified by the words "in the circumstances", counsel for the plaintiff would not seek to say that that expression of opinion does not accord with English Law. It is just a question of expression. I myself would prefer to put it this way: A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art. I do not think there is much difference in sense"*

[29] *R v Arthur* (1981) 12 BMLR 1. In this case, the doctor was acquitted of attempted murder. One of the reasons is that the doctor's action was supported by a body of medical opinion.

[30] *Airedale NHS Trust v Bland* [1993] 1 All ER 821. In this case regarding euthanasia, the court also applied the *Bolam* test as an aid to assess the doctor's criminal liability in discontinuing the life of a patient.

[31] This right is guaranteed by s65DA of Criminal Procedure Ordinance, Cap. 221

[32] *Thomas v News Group Newspapers Ltd* [2002] E.M.L.R. 4

It shall be a defence to any action of harassment to show that the pursuit of the course of conduct was reasonable in the particular circumstances.

When determining whether the pursuit of the course of conduct by a News Organisation was reasonable, courts shall consider the opinion of a responsible body of journalists.

For the purpose of this section, responsible body of journalist refers to

1. *Hong Kong Journalists Association*
2. *Any other journalist body which the court thinks fit.*

Conclusion

Alternatives		News-gathering activities with reasonable pursuit	News-gathering activities with unreasonable pursuit on matters regarding public interest
1	LRC Framework	Protected	Not Protected
2	LRC Framework + Public Interest Defence	Protected	Protected
3	LRC Framework with *Bolam* + Public Interest Defence	Protected with Greater Certainty	Protected

My proposal and the advantages of it can be best summarized by the above table. With the current proposed framework of the LRC, there is inadequate protection for news-gathering activities on matters regarding public interest. With the public interest defence introduced, press freedom can be better guaranteed, without defeating the purpose of the stalking legislation. Moreover, it is submitted that the LRC proposed reasonable pursuit defence requires a balancing exercise which may lead to legal uncertainty. With the *Bolam* principles introduced, the integrity of the media can be better protected. Therefore, I submit that alternative 3 is the best draft legislation.

To stalking_consultation@cmab.gov.hk
cc
bcc
29/03/2012 02:57 Subject 關於各種交通工具纏擾性的資訊發佈
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

敬啓者：

本人認為各種交通工具，好像巴士和地鐵的媒體屏幕，都應立法取締，並跟據相關的纏擾法則，
以有刑事罰則的條例約束各種交通工具上有任何纏擾性的資訊發佈。

市民（乘客／消費者）附錢乘搭交通工具，是希望得到舒適的旅程以到達目的地，
但各種交通工具公司則因私人利益，則透過加入媒體屏幕，並播放諸如roadshow一類所謂「資訊頻度」，
剝削了市民享有舒適旅程這個合理不過的期望。它們聲稱是提供資訊，但實質上是以纏擾市民的方式取得私利。

這些所謂「資訊頻度」，之所以構成纏擾，乃因市民沒有任何選擇權，甚至最為基本的，開關權都欠奉。
要知道在行走中的交通工具是一個非開放式空間，在沒有選擇下，市民與這些頻度是困獸鬥的情況。
再者，由頻度到音量都沒有選擇。加上這些所謂「資訊」，實際上是以廣告為主，煩擾性便更為嚴重。
如是情況一如洗腦和噪音，市民被強迫去聆聽、不斷重覆去接收這些資訊。
搭一趟長途巴士，會知道這些噪音會為市民帶來纏擾、騷擾、甚至令人精神衰弱。

我們參考飛機的情況，便可明白這些「媒體屏幕＋所謂「資訊頻度」」的設計有嚴重問題。
在飛機上乘客可以選擇開關、頻度、音量（而且不設廣播模式，讓近如鄰座也不用擔心被騷擾），乘客與飛機上的這些媒體屏幕，甚是友好。
所以說，這不是針對及干涉這些交通工具公司去找另外的方法賺錢，而是現存的手法，是甚具惡意的纏擾。

為什麼是惡意呢？從以下鏗鏘集片段（由02：18到03：00）
http://youtu.be/O4xZ2YN9evE

我們可以知道他們不是不知道有另一些方法去讓市民有更舒適的旅程，而只不過是他們認為這樣不夠效率去讓他們得到利益。
這樣只能說明現在的情況是預先設計好，惡意性地採用最霸道的形式，而不是基於無心無知而產生的失誤。

我認為市民的人權不能因為方便他們更有效得到利益而被剝奪。

人權更不應向這些具壟斷性的交通工具公司的利益妥協。

我認為纏擾法有責任保障市民不被任何形式的資訊發佈纏擾，所以希望你們可以為市民伸張公義，奪回市民的寧靜的乘搭空間。
重申，現今科技日新月異，我們針對的不是「媒體屏幕＋所謂「資訊頻度」」這麼短視，而是立法保障市民不被任何形式的資訊發佈纏擾！

敬希關注！

祝

文安！

市民
羅先生

To stalking_consultation@cmab.gov.hk
cc
bcc
29/03/2012 03:13 Subject 絕對贊成

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

我以前男朋友欠我幾萬元還不停用無來電打電話滋擾我

To stalking_consultation@cmab.gov.hk
cc
bcc
29/03/2012 03:14 Subject 反對纏擾法

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

若然政府想將呢個法例乘機打壓新聞自由及集會自由實屬不智
你認為記者會害怕而不再追訪嗎?市民會害怕不再示威遊行嗎?
例子D&G事件如果立法後呢種事情再發生的話門外千幾人全被捕
全世界都報導(港人因D&G企視在門外示威千人被捕)你話會有幾多國家點睇香港,對香港有好處嗎?
如拉過千市民要動用幾多警力同埋要分幾多間警署接收班示威者
拉人過程市民會反抗嗎?做成個種社會不穩定抗爭不斷對香港好嗎?香港市民係好重視言論自由的核心價值你越打壓而更加反抗怎辦呢?內地城市有很多都越來越開放對一些不是反對國家政權而是市民自身的權益內地都比市民抗議及在網上自由發言.反而香港日漸倒退香港優勢已漸漸不再,請政府三思立法後所帶來種種不穩!!

29/03/2012 03:39

To stalking_consultation@cmab.gov.hk
cc
bcc
Subject our comment

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

Dear Sir,

I am writing to express my comment on an anti- stalking law. I am a HK resident and I have bought a flat five year ago, after moving-in, i found that the previous owner has owed some finance companies a lot of money, but these finance companies are non-stopping annoying me until now, they made phone call (I don't know why they have my numbers) , they came to my flat many times to look for the previous flat owner, but in fact, i do not know the previous flat owner. they make me and my family members crazy and can't sleep very well as i am under pressure. We really do not know what can we do.

I hope this law can help us and my family members.

Regards,
Dickie

我(姓名)(身分證號碼(刪除))是一名(刪除)(請填上職業或身分)，現具函反對政制及內地事務局擬議另立新例禁制纏擾行爲，因爲有關新例誓將影響新聞自由和市民請願遊行等表達自由。

本人認爲，政府可考慮在《家庭及同居關係暴力條例》、《放債人條例》及《業主與租客條例》中加入禁止纏擾行爲的條款，以保障受前歡舊愛纏擾的男女、無辜受收債行爲影響和因強迫收樓而受逼迫的小市民。

(寄件人要求不具名公開意見)

To "stalking_consultation@cmab.gov.hk" <stalking_consultation@cmab.gov.hk>
cc
bcc
29/03/2012 09:29 Subject 反對立法禁制纏擾行為
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

我____梁恩榮_____(身分證號碼_____(刪除)_____)是一名_大學副教授_____(請填上職業或身分)，現具函反對政制及內地事務局擬議另立新例禁制纏擾行為，因為有關新例誓將影響新聞自由和市民請願遊行等表達自由。

本人認為，政府可考慮在《家庭及同居關係暴力條例》、《放債人條例》及《業主與租客條例》中加入禁止纏擾行為的條款，以保障受前歡舊愛纏擾的男女、無辜受收債行為影響和因強迫收樓而受逼迫的小市民。

LEUNG Yan Wing (梁恩榮) (PhD)

(刪除)

Phone: (刪除)

29/03/2012 09:51

To "stalking_consultation@cmab.gov.hk" <stalking_consultation@cmab.gov.hk>
cc
bcc
Subject 反對纏擾立法

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

你好

我是雷浩昌 (刪除) ，是一名研究助理和極力捍衛香港自由的市民，現具函反對政制及內地事務局擬議另立新例禁制纏擾行為，因為有關新例誓將影響新聞自由和市民請願遊行等表達自由。

本人認為，政府可考慮在《家庭及同居關係暴力條例》、《放債人條例》及《業主與租客條例》中加入禁止纏擾行為的條款，以保障受前歡舊愛纏擾的男女、無辜受收債行為影響和因強迫收樓而受逼迫的小市民。

希望政府能接納市民大眾的意思，不要一意孤行。

謝謝!

S0324

就事先生/小姐：

反對制訂纏擾法

本人反對制訂纏擾法，部份人因情債、錢債問題被纏擾，其實他們自己有責任，只是他們最後解決不了，社會只好讓社工、警察、法官驚他們。

至於地產商、上市股東被纏擾也時有所聞，他們鑽盡法律鑽賺到盡(馬鞍山一樓盤可見)或用財技騙細股仔錢，也無可非，不過他們有整隊律師幫忙。被纏擾

另外，政府或高官被纏擾如曾蔭權和其太太被纏擾或彈劾應該接受，政府同樣在某些問題上有則改之，無則勉之罷。

小市民面對社會不公、生活壓力、居住環境日差(到處屏風樓)他們可以做甚麼讓他們叫叫嚷嚷罷！

在要淡香港人的質素已很好了，很自律，不用太多法律纏擾了，大家都自由罷！

祝工作愉快！！

(署名來函)

26-3-2012

(未能確定寄件人是否願意公開姓名)

Team 4,
Constitutional and Mainland Affairs Bureau.

(deleted)

28 March 2012.

Re: Consultation Paper on Stalking

I support legislation be introduced to make stalking a criminal offence, and persons being harassed being able to pursue relevant civil actions, both to protect the peace and well-being of persons being harassed.

Yours sincerely,

(signed)
A (Ho Tak On)
Hong Kong citizen

[illegible]信箱：[illegible]

法改会：

关于把偏执刑事化，我的认为是错的。比如有人欠我的钱，如果打几次电话，通知他要还钱，本来是天公地道的事，这并非犯罪。如果这样也算犯罪，岂不是荒唐。如果是威胁，现在已有敲诈金，必要加强禁止金就可以了。你不能把合法无罪的事情，随便刑事化。如果这样便形成了白色恐怖，总之，轻天罪的事情，动不动就构成有罪，是不能允许的。把合法合理的变成有罪，怎么解释呢？

(署名来函)

2012年9月29日

(未能確定寄件人是否願意公開姓名)

To stalking_consultation@cmab.gov.hk
cc
bcc
29/03/2012 12:38
Subject 有關纏擾行為的 諮詢文件
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

敬啓者，

本人強烈反對制訂《纏擾法》因將纏擾行為刑事化，將會嚴重損害及打擊香港示威抗議及新聞採訪自由，並妨礙公民媒體的發展。

一位關心香港人權、法治、及言論採訪自由的退休人士上

To: Team 4, Constitutional and Mainland Affairs Bureau
12/F, West Wing
Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Re: Consultation Paper on Stalking

We refer to the captioned consultation paper released in December 2011. From banking perspective, we would like to provide the following comments:

The paramount concern of the Bank is that the proposed legislation may hinder the legitimate debt collection activities taken by the Bank itself or by its appointed agencies.

What constitutes harassment?

In most cases, upon the account is fallen into past-due or over-limit, our collectors are required to perform phone dunning to the customers. Telephone calls will be made to all available contact phone numbers in order to reach the debtors/customers. Sometimes, we will leave messages to the customer's family member/colleagues to ask the debtors/customer to call back if he/she cannot be reached over phone, however, if there is more than 1 call & customer feels that it is disturbing, this may possibly fall within the ambit of harassment as it may cause the victim "alarm" or "distress" which will amount to criminal offences. Another usual case is the sending out of repayment reminders, which may have the same consequence notwithstanding that the bank is just taking legitimate actions to recover the debt.

Defence

We recommend that a specific defence should be made available to Banks/Financial Institutions/Collection Agencies to cover the above actions.

Dah Sing Bank, Limited
29th March 2012

To stalking_consultation@cmab.gov.hk
cc
bcc
29/03/2012 13:33 Subject 本人反對制訂《纏擾法》之意見書
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

致：政制及內地事務局

本人(姓名)，任職 大專研究助理 ，現致函反對政制及內地事務局擬議另立新例禁制纏擾行為，因為這將影響新聞自由和市民請願遊行等表達自由。

一) 香港沒有需要訂立《纏擾法》

1. 打擊新聞採訪自由

香港社會並沒有強烈的聲音要求刑事化纏擾行為，亦沒有一些嚴重的法庭案例出現，令社會覺得非立此法不可。這令我們非常擔心《纏擾法》的立場背景是要進一步收窄已經在不斷後退的新聞自由。諮詢文件特別引入英國同類型法案中「集體騷擾」一項，即多人纏擾同一對象一次即算犯罪。若多位記者追訪政治或公眾人物，社會議題時，集體採訪隨時變「集體纏擾」。

再加上，在諮詢文件上，對纏擾行為的定義，包括「注視或暗中監視受害人的居所或工作地點」、「在不受歡迎的情況下登門造訪」、「向第三者（包括社會）披露受害人的私隱」、「在街上尾隨受害人」、「對受害人作出虛假指控」或「謾罵」等，均與記者採訪和新聞言論自由相關，法例一旦通過，將來記者追查涉及公眾利益議題，如特首有沒有貪污、特首候選人有沒有行為失當或箝制言論自由等，會步步為艱、採訪時如履薄冰，定必損害新聞自由，不利媒體監察權貴，為公義和弱勢群體發聲。

2. 打擊示威抗議自由

除上述有礙新聞自由的定義外，纏擾行為還包括「送贈受害人不欲接受的禮物或古怪物件」和「阻礙合法活動」等，又由於「受騷擾」、「令人煩厭」的界定不清，法例將嚴重打擊示威抗議自由。本人深切憂慮條例將打壓社運、遊行集會的權利以及方式。

3. 纏擾會否包括網絡言論與表達

《纏擾法》的諮詢文件雖然沒有處理「網絡世界」的活動，但越來越多的現實世界的法例，都延伸至互聯網，當中包括「色情及淫褻物品檢控條例」、「違反公德行為」等，這令人擔心，網上的「虛假指控」或「謾罵」，以致目前網民的「惡搞」式表達

方法，會否成為纏擾行為？本人認為這項立法會對網絡上的言論自由造成巨大的威脅。

二) 不應把纏擾行為定為刑事罪行

本人認為目前大部份的纏擾行為，均能透過現有刑法，如「家暴條例」及民事訴訟解決，絕無必要另立為刑事罪行。

「刑事化」纏擾行為後，投訴者只需要表示感到困擾，便可以報警求助。低門檻的要求，大大減低投訴人的報案成本：政府代為檢控和執法，法庭訴訟開支全由公帑支付。這令投訴者和被投訴者處於極不公平位置，高官商賈反而不用一分一毫便能對付異見者及採訪媒體。若警方沒有計劃增加資源處理眾多的求助，在警力不足情況下，將來會否出現選擇性執法？可以預期，法例實施後容易否變成權貴高官打壓異議聲音和追蹤採訪的工具。

三) 免責辯護難以保障公民權

有建議把「新聞採訪」等納入為免責辯護，然而免責辯護是要等案件進入法庭程序時作為抗辯理由，而檢控過程本身已阻礙了正常的採訪活動，而新聞機構亦要負擔昂貴的訴訟費。此外，「新聞採訪」的免責條款，難保障無償的公民採訪活動，結果變相會把公民新聞採訪活動刑事化。

本人認為不應該展開《纏擾法》立法程序。政府既然指出纏擾行為常出現於家庭或戀人關係，我們促請政府盡快修改家暴條例，加入纏擾行為刑事化，保障受虐人士，而不是捆綁式為纏擾行為立法，捨易取難。

(寄件人要求不具名公開意見)